(23,571)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 996.

GREAT NORTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

GERTRUDE O'CONNOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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1 State of Minnesota Supreme Court, October Term, 1912.

17859.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Return.

W. L. Clift, Attorney for Appellant, St. Paul, Minn.
James Mattimore and T. P. McNamara, Attorneys for Respondent, St. Paul, Minn.

Filed Sep. 10, 1912. I. A. Caswell, Clerk.

2 State of Minnesota Supreme Court, April Term, 1912.

State of Minnesota District Court, County of Ramsey, Second Judicial District.

GERTRUDE O'CONNOR, Plaintiff,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Complaint.

Plaintiff for her complaint against the defendant alleges:

(1) That the Great Northern Railway Company now is and during all the times hereinafter mentioned was, a corporation, duly organized, created and existing under and by virtue of the laws of the State of Minnesota, and a common carrier of freight and passengers for hire, and engaged as such in operating a line of railway from Minneapolis, Minnesota, to Portland, Oregon.

3 (2) That on or about the 31st day of October, 1910, plaintiff was the owner of certain personal property, an itemized statement of which is hereto attached marked Exhibit A and made a part hereof, at Minneapolis, Minnesota, all in good order and shipping condition, the same being loaded in Great Northern Car No. 47404, and on said date and in such condition at Minneapolis, caused the same to be delivered to the defendant for transportation to Portland, Oregon, there to be delivered to the plaintiff; that defendant duly accepted said shipment, and for a valuable consideration, agreed to transport the same to Portland, Oregon, within a reasonable time, and to exercise due care for the protection and preservation of said property while in transit.

(3) That defendant did not transport said property to Portland, Oregon, within a reasonable time, but on the contrary, carelessly and negligently delayed said shipment beyond a reasonable time

and did not exercise due care for the protection and preservation of said property while in its possession, but on the contrary carelessly and negligently caused and allowed said property to become totally destroyed, to the plaintiff's damage, in the sum of five hundred ninety-eight and 65/100 dollars ($598.65).

(4) That by reason of the premises plaintiff has been damaged in the sum of five hundred ninety-eight and 65/100 dollars ($598.65).

Wherefore, plaintiff prays judgment against said defend-
4 ant for the sum of five hundred ninety-eight and 65/100 dollars ($598.65), together with the costs and disbursements of this action.

JAMES MATTIMORE,
Attorney for Plaintiff.

505 National German-American Bank Bldg., St. Paul, Minnesota.

EXHIBIT "A."

Inventory of Shipment.

1 Underwood Typewriter.
1 Metal Cover for same.
1 Set Century Dictionaries.
1 Trunk.
1 Exerciser.
1 Electric Lamp.
1 Copy holder.
1 Box Envelopes (500).
1 Box Stationery (Typewriter).
1 Pr. Shears.
1 Pr. Scissors.
1 Pr. Scissors (Manicure).
1 Dz. Lead Pencils.
1 Japanese Tea Pot.
1 Set Postals (25).
1 Sewing Box with contents.
1 Handkerchief Box.
1 Set Window Curtains.
Table Linen.
Bed Linen.
Bath Towels.
5 Hand Towels.
Silverware.
1 French Grammar.
1 Graded Course in Music.
1 Physical Culture.
6 Copies "System."
3 Books on Synonyms, etc.
2 Books on Verse.
1 Nail File.

1 Hair Brush.
1 Ivory Nail Brush.
1 Set Manicure Preparations.
2 Friction Brushes.
1 Gold Bar Pin.
1 Hand Carved Bar-ette.
5 Large Shell Pins (Hair).
1 Jewel Box.
1 Long Chain Blue Beads.
1 Turquoise Necklace.
1 Shell Necklace.
1 Gold Necklace.
1 Jade Bracelet.
1 Ruby Set Brooch.
1 Gold Band Ring.
1 Opal Ring (2 Stones).
1 Brown Cloth Dress.
1 Blue Linen Dress.
1 Plaid Gingham Dress.
1 Check Dress.
1 Striped Novelty Dress.
1 Summer Coat.
1 Net Waist.
6 1 Pale Blue Silk Dress.
1 Dark Blue Silk Dress.
1 Pongee Dress.
1 Organdy Dress.
1 White Dress.
1 White Dress.
1 Cotton Voile Dress.
1 Pique Dress.
1 Black Silk Waist.
1 Chamois Vest.
5 Yds. Dress Material.
1 White Waist.
1 White Waist.
1 Bathing Suit.
1 Silk Underskirt.
Underclothing.
2 White Princess Slips.
4 Serving Aprons.
1 Brown Auto Veil.
2 Dz. Hose.
1 Pr. Shoes.
1 Pr. Shoes.
1 Umbrella.
1 Kimona.
2 Office Aprons.
1 Set Sleeve Protectors.
1 Pr. Street Gloves.
1 Pr. Long Silk Gloves.

1 Pr. Long Silk Gloves.
1 Pr. Rubber Gloves.

Endorsed: Filed Jan. 21, 1911. Matt Jensen, Clerk. By G. A. Johnson, Deputy.

7 (Title of Cause.)

Amended Answer.

The defendant for its amended answer to the complaint herein:

1. Admits that it is and was at all times mentioned in the complaint, a Minnesota Railway corporation and engaged in business as a common carrier of freight and passengers for hire in the States of Minnesota, Washington and elsewhere, but denies that it operates or ever has operated a line of railway into the State of Oregon to the City of Portland or elsewhere in said state.

2. Admits that on or about October 31st, 1910, it received at Minneapolis, Minnesota, from the Boyd Transfer & Storage Company, a certain shipment of goods, described as emigrant movables, loaded and contained in Great Northern Car No. 47404, billed and consigned to the Portland Van & Storage Company at Portland, Oregon, which it agreed to transport over its lines of railway from the City of Minneapolis to the City of Spokane, Washington, and at the latter point deliver said shipment to its connecting carrier, the Spokane, Portland & Seattle Railway Company, for transportation to said Portland and delivery at that point to the consignee, the said Portland Van & Storage Company.

3. Admits that the contents of said car were wholly destroyed while same were in its possession, but denies that said loss resulted from any negligence or want of care on its part.

8 4. Except as hereinbefore admitted or otherwise answered, defendant denies each and every allegation of the complaint.

5. Defendant further answering, alleges on information and belief, that a portion of the shipment hereinbefore referred to was the property of the plaintiff herein and is the same property which is attempted to be described in the complaint herein.

6. Defendant further alleges that at the time said goods were delivered to it by the consignor, the said Boyd Transfer & Storage Company, said consignor, in consideration of a lower rate of freight, charged and assessed by said defendant and its connecting carrier, the said Spokane, Portland and Seattle Railway Company, for the transportation of said goods from said Minneapolis to said Portland, declared the value of such shipment to be not in excess of $10 per 100 pounds, and by instrument in writing released said defendant and its connecting carriers from any and all liability arising or growing out of the loss of or damage to said goods in excess of the sum of $10 per 100 pounds.

7. Defendant further alleges that the tariffs or schedules of rates showing the rates, fares and charges for the interstate transportation of household goods and emigrant movables and effects over the

lines of defendant company and said Spokane, Portland and Seattle Railway Company in effect at the time said shipment moved, were duly filed with the Interstate Commerce Commission and published and posted as required by law, which tariffs or schedules contained
9 the rules and regulations of the defendant and its connecting carriers governing the application of such rates, fares and charges and the conditions and limitations to which same were subject.

8. Defendant further alleges that the goods owned by plaintiff and forming part of the shipment hereinbefore described did not weigh to exceed five hundred forty-five (545) pounds.

9. Defendant further alleges that various articles enumerated in Exhibit "A" attached to and forming a part of the complaint herein, were not entitled to be transported as freight under the classification of emigrant movables or otherwise and that defendant is not liable under any circumstances or in any amount for the loss of or damage to such goods.

10. Defendant denies that it is liable to plaintiff for the loss or destruction of any of the goods enumerated in said Exhibit "A" attached to the complaint herein, but hereby offers to allow plaintiff to take judgment against it in this action for the sum of fifty-four and 50/100 ($54.50) dollars, together with interest and costs.

Wherefore defendant prays that plaintiff take nothing by this action beyond the judgment herein offered.

W. L. CLIFT,
Attorney for Defendant.

203 Great Northern Bldg., 3rd and Rosabel Streets, St. Paul. Minnesota.

Endorsed: Filed May 23, 1911. Matt Jensen, Clerk. By Lyle Pettijohn, Deputy.

10 (Title of Cause.)

Reply.

Now comes the plaintiff in the above entitled action, and for her reply to the answer of the defendant herein,

Denies each and every allegation thereof, except in so far as the same admits the allegations of the complaint herein.

Wherefore, plaintiff prays judgment according to the prayer of her complaint.

JAMES MATTIMORE,
Attorney for Plaintiff.

505 National German-American Bank Bldg., St. Paul, Minnesota.

Endorsed: Filed Jan. 21, 1911. Matt Jensen, Clerk. By G. A. Johnson, Deputy.

(Title of Cause.)

This case came on for trial before Hon. Olin B. Lewis, J., with a jury, on the morning of May 29, 1911, James Mattimore and T. P. McNamara appearing on behalf of plaintiff and W. L. Clift appearing for defendant.

Jury empaneled and sworn.

Case opened on behalf of plaintiff by Mr. McNamara.

Mr. McNAMARA: Plaintiff offers in evidence the deposition of Gertrude O'Connor, taken before Mr. J. F. Sedgwick, a notary public, at his office, No. 212-14 Fenton building, Portland, Oregon, on the 8th day of March, 1911.

11 That said GERTRUDE O'CONNOR having been by me first duly sworn, testified as follows:

Q. State you name, age and residence.
A. Gertrude O'Connor, 26, 181 South 17th.
Q. Are you the plaintiff in this case?
A. Yes.
Q. Did you ever have any transaction with the Great Northern Railway Company, the defendant in this case?
A. No.
Q. Did you ever ship any goods or property belonging to yourself over the road of the Great Northern Railway Co.?
A. Yes.
Q. Will you please state what you shipped over the road of the Great Northern Railway Co.?
A. Typewriter, trunk, and box of Century dictionaries.
Q. In order to simplify matters I show you an inventory of shipment, marked Plaintiff's Exhibit "A," and I ask you to examine it and state if it states the correct list of all the property shipped by you over the road of the Great Northern Railway Company and which you claim were lost or destroyed by the Great Northern Railway Company, the defendant herein.
A. It is a correct list so far as I can remember.
Q. Who made the list?
A. I did.
Q. How soon after the loss?
A. As soon as I was notified by the Portland Van & Storage Co.

12 Q. Who owned the property specified in this list?
A. I did.
Q. How long have you lived in Portland, Oregon?
A. Since the 27th of October, 1910.
Q. Where did you live before you came to Portland Oregon?
A. I lived for four months in Minneapolis, from July 1 to October 24, and before that I lived in St. Paul.
Q. When you left Minneapolis for Portland, Oregon, what arrangements did you make in regard to shipping the goods which you claim were lost?

Mr. CLIFT: Just a minute. I object to that as irrelevant, hearsay, and immaterial, as nothing in the arrangement made by her would have any tendency to bind the Great Northern Railway Company, it appearing affirmatively that the arrangment was with the Boyd Transfer & Storage Company, her agent.

The COURT: I think the objection is well taken.

Exception by plaintiff.

Q. Did you ship the goods through the Mattison Transfer Co.?

A. I shipped them through the Boyd Transfer Co.

Q. Did you make the arrangements with the Boyd Transfer Co. yourself, or did somebody else make arrangements for you?

A. I made them personally and my trunk was arranged for by my cousin, Sadie Snee.

13 Q. What conversations and what transactions took place when you went to see the Boyd Transfer Co. with reference to shipping your property to Portland, Oregon.

Mr. CLIFT: Objected to as immaterial, irrelevant and not binding on the defendant for the reasons previously given. The question as to what arrangements she made with the Boyd Transfer Company is not binding upon this defendant in any way.

The COURT: The questions are complicated somewhat by the fact that there is a dual defense pleaded in this answer. I am not criticising the pleading. If counsel's contention is true, he seems to take advantage of fraud in his answer and also seeks to take advantage of a release which he claims is binding upon the plaintiff. Upon the question of fraud, I take it, that it is immaterial whether the plaintiff consented or not to the contract that was actually made. If the contract was made under circumstances and was of such a character that defendant was misled by it the plaintiff is bound by it whether she knew of it personally or not, provided she acted through an agent. That brings us down to the other question as to what authority a forwarding agent has to make contracts for shipments by common carriers. I am inclined to think the rule is that under such circumstances the forwarding agent has authority to make such a contract as is reasonable and necessary for the shipment of the goods. I am not prepared to say at this time that a contract limiting liability is a contract necessary for this agent

14 to make in order to ship these goods. I think at this time, without determining the validity or invalidity of the contract, I will receive this testimony and will instruct the jury upon the law applicable thereto later, and permit the plaintiff to show the circumstances under which shipment was made, and then will pass upon the legal effect, legal conclusion of it, either taking the question away from the jury, or giving them proper instruction.

Exception by defendant.

A. I asked him to call at my apartment for my things and to make arrangement for boxing them with the exception of the typewriter, which was boxed by the Underwood people. I signed a contract to pay for them when they arrived in Portland, Oregon, and

I noticed a clause of $5 valuation on the paper and objected to shipping my goods at a low valuation as they were not insured.

Mr. CLIFT: Of course that answer is understood as being received subject to my objection.

The COURT: Yes, that is received as against the objection which you made.

Q. What did the Boyd Transfer Company tell you?

Mr. CLIFT: I wish to interporse an objection to that question as incompetent, irrelevant, immaterial, and for the reasons previously assigned, not binding upon the defendant.

The COURT: I think I will receive the first part of that answer.

A. They told me that they would ship my goods the way
15 they did all their goods and it would be all right.

Q. I show you here Plff's. Ex. B. Will you please examine it and state what it is.

A. It is an inventory of the shipment boxed.

Q. What do you have to say in regard to there being stamped at the bottom of said inventory the following words: "Valuation $10 per cwt. so declared by shipper."

Mr. CLIFT: Objected to as incompetent, irrelevant, immaterial, not binding upon the defendant, the inventory referred to being the receipt and inventory given to the plaintiff by the Boyd Transfer & Storage Company, in no way binding on the defendant company.

The COURT: I am inclined to think following the previous ruling that the circumstances under which this property was delivered to the railroad company and shipped may be shown. I am making that holding on this understanding of the law, that the storage or transfer company, express company, only had authority to make a contract with the railroad company such as was reasonable and necessary for the shipment of these goods over the railroad company's line. We will hear the testimony and an exception is granted.

Exception by defendant.

A. This is the first knowledge I had of the goods being shipped under this valuation, and in speaking with the Boyd Transfer people I declared my goods to be new and they had a good idea of their approximate value.

16 Mr. CLIFT: I wish to make a motion to strike that answer out as being immaterial, irrelevant, not responsive, and a conclusion of the witness.

The COURT: The last part, "they had a good idea of the actual value," may be stricken out, and the jury will disregard the statement.

Q. At the time you saw the Boyd Transfer Co., and you made arrangements with them for the shipping of your goods, was there anything said as to paying a higher rate?

Mr. CLIFT: The defendant objects to this question as incompetent, irrelevant, and immaterial for the reasons previously assigned,

any arrangement that was made between the plaintiff and the Boyd Transfer Company, not being binding on the defendant.

Objection overruled.

A. I told the boyd people that I was willing to pay the regular rate, and nothing was said as to just what valuation they were going under, but I understood that I would have to pay the regular rate when they arrived in Portland, Oregon, and I offered to pay for the goods there, but they didn't seem willing to have me pay for them as they hadn't seen them yet and couldn't make up a bill until they had.

Mr. CLIFT: I object to the last part of that answer as being a conclusion of the witness, hearsay, and it is also irrelevant and immaterial, "they didn't seem willing to have me pay for them," and ask to have it stricken out.

The COURT: The last part of the answer, "but they didn't
17 seem willing to have me pay for them, as they hadn't seen them yet and couldn't make up a bill until they had," may be stricken out and the jury will disregard that.

Q. Who boxed the property shipped by the Great Northern Railway Co.?

A. The Underwood Typewriter Company boxed the typewriter and the Boyd people boxed the other articles.

Q. In what condition were the goods at the time they were boxed?

A. When they left my room they were in good condition.

Q. Did you sign any agreement with the Great Northern Railway Co. or with the Boyd Transfer Co. to ship your property at the valuation of $10.00 per cwt.?

Mr. CLIFT: Objected to as incompetent, irrelevant, also immaterial, it already appearing from her testimony that no contract was entered into between herself and the Great Northern Railway Co., and that any contract of shipment entered into between herself and the Boyd Transfer Co. is not binding upon the defendant.

The COURT: She may answer whether or not she signed any such agreement. So much of the answer as applies to that specific question may be read.

Exception by defendant.

A. I signed what I understood to be a contract to pay for the removal of the goods when they arrived here.

Q. Did you assent or consent to any additional terms or
18 conditions to be added to said contract or shipping receipt otherwise than they were expressed at the time you signed it?

Mr. CLIFT: Objected to as irrelevant, immaterial, and not binding on the defendant.

The COURT: I will allow the question so far as it applies to her personal act in the matter.

Exception by defendant.

A. I did not.

Q. Relative to the condition of your Underwood typewriter, will

you please state how long you had used the machine, whether it was a new machine when bought by you or a second-hand machine, what you paid therefor, and what the value of the machine was at the time it was lost; also what it would cost to replace it.

Mr. CLIFT: Objected to as immaterial and irrelevant, and calling for incompetent testimony to prove damages. The measure of damages being the fair market value, not what was paid for the article new or what it would cost to replace it. Defendant further objects at this time to the introduction of any evidence of any other or different value than $10 per hundredweight, on the ground that such evidence is irrelevant and immaterial, the shipper having declared the value of the shipment to be not in excess of $10 per hundredweight in accordance with the provision of tariff carrying rates applicable to shipment, which tariff was duly filed with the Interstate Commerce Commission and posted and published as required by law, and plaintiff is bound by the terms and conditions specified in the tariff, and is estopped at this time to claim a higher valuation than $10 per hundredweight.

10

The COURT: I suppose what she paid for it and what it would cost to replace it is hardly competent. She may have paid much less than it was worth when she bought it, or she may have paid a good deal more; of course that would not be controlling. You can show how long it had been used, if that question is asked.

A. I have never given it any more than two weeks of use and was a new machine and a metal cover.

Q. In what condition was the set of Century dictionaries and what was its reasonable value?

A. The set of Century dictionaries were practically new. They had never been referred to any more than about ten times, and their value is stated in the inventory.

Mr. CLIFT: To avoid any possible misunderstanding, and for the purposes of the record, I desire to move to have that answer stricken out for the reasons given in the objection to the previous question on the value.

The COURT: The motion will be denied. I will allow the answer to stand.

Q. What do you have to say in regard to the trunk?

A. The trunk was a new trunk, never having been used.

Mr. CLIFT: Hold on just a minute. I object to the balance of that answer as being immaterial, irrelevant and hearsay.

Objection sustained.

20 Q. What do you have to say in regard to the value and condition of the dresses as listed in your inventory?

Mr. CLIFT: Objected to as immaterial and irrelevant on the ground previously stated. Evidence of value in excess of $10 per hundredweight is incompetent.

The COURT: She may answer, I think.

A. The dresses were all new, and if anything, a higher value than listed.

Q. What do you have to say in regard to the condition and value of any of the rest of the articles specified in the inventory of shipment marked "Plff's Ex. A?"

Mr. CLIFT: Objected to as immaterial and irrelevant, on the grounds previously assigned.

The COURT: The answer may be received, I think.

A. The clothing was new, and I listed them at their value and not what it would cost to replace them nor what they originally cost.

Q. I now offer in evidence Plff's. Ex. A, consisting of an inventory of shipment specifying all the articles which belonged to the plaintiff and which were lost or destroyed by the defendant, and their respective values.

Mr. CLIFT: Defendant objects to this inventory on the ground that it is irrelevant and immaterial, the actual value at the time of the loss being immaterial, the value declared by the shipper at the time shipment was accepted by the carrier being $10 per hundred-
weight as provided for in defendant's tariffs duly filed with
21 the Interstate Commerce Commission and posted and published as required by law. Defendant further objects specifically to the introduction of any evidence as to the value of gold bar pin, long chain blue beads and various other articles of personal jewelry, on the ground that it is incompetent, irrelevant and immaterial, the defendant common-carrier being prohibited from receiving such articles and transporting same as freight under the provision of its tariffs duly filed with the Interstate Commerce Commission and posted and published as required by law, particuarly Western Classification No. 48.

The COURT: It may be received. In making that ruling the Court does not wish to be understood as ruling finally or definitely that all of those articles will be the subject of consideration by the jury. Later evidence may exclude some of them from the consideration of the jury.

Mr. MCNAMARA: I now offer in evidence Plff's. Ex. B, same being a shipping receipt of the Boyd Transfer & Storage Company.

Mr. CLIFT: Objected to as irrelevant, immaterial and not binding on the defendant.

The COURT: It may be received as bearing upon the knowledge of the plaintiff in making the shipment and her instructions to her agents.

Cross-interrogatories propounded by Mr. OMAR SPENCER:

Q. These arrangements, Miss O'Connor, about which you testified
as to the shipment of your goods were with the Clerk of the
22 Boyd Transfer & Storage Co.?

A. Yes, sir.

Q. Now, none of these conversations about which you have testified were had with any of the clerks or agents or representatives of the Great Northern Railway Co.?

A. They were had with the Boyd Transfer Company.

Mr. CLIFT: I will skip now to the question which is about the fourth one down. The preceding questions I will not read as under my theory of the case they are irrelevant and immaterial.

Mr. MCNAMARA: Well, in that case, your Honor, I ask to be permitted to read them at this time to preserve the sequence of the deposition.

The COURT: I suppose the plaintiff is putting in her case at this time, and the plaintiff may offer such parts of the deposition as she sees fit, and when the defendant is putting in its case it may refer to and offer such parts of the deposition as it sees fit.

Q. Did you give them authority to deliver the goods to the railway company?

A. I asked them to call for the goods and they stated they would deliver it to their own private baggage car in the railway yards in Minneapolis.

Q. What I want to know, Miss O'Connor, is whether you gave this transfer company authority authorizing it to take these goods and deliver them to the railway company for shipment to Portland, Oregon, and to make arrangements with the railway company for shipment?

23 A. I gave them authority to ship them the way they ship all their goods.

Q. What is the reasonable value of the silverware that you shipped that was lost without reference to the written memorandum? Can you answer the question?

A. I can't remember now.

Q. About the jewel box?

A. I can't give the price on that as it was a gift. I put a very low valuation on it in the inventory.

Q. About the long chain of blue beads. What was the reasonable value of that?

A. It was a gift also.

Q. Have you no independent recollection of the value?

A. I know I never asked the value.

Q. And how about the opal ring with two stones? What was the value of that?

A. That was a gift also and supposed to be a very good quality of stone. I don't know what the real value of such a ring would be.

Q. How did you arrive at these values about which you testified?

A. I know the prices of some of the articles.

Q. Did you personally make any arrangements with the Great Northern Railway Co. with reference to shipping these goods to Portland?

A. I dealt with them indirectly.

Q. Did you ever go to the office of the Great Northern Railway Co. with reference to the shipment of these goods?

24 A. No, I would not have shipped them on that line if I did.

Q. And did you enter into any agreement with them or have any transactions with them or any one directly representing the Great

Northern Railway Co. with reference to the shipment of these goods to Portland?

A. No, sir.

Q. Your arrangements as to the shipment of these goods were with the Boyd Transfer Co.?

A. Yes, sir.

Mr. McNAMARA: Now, I will just offer in evidence and read to the jury the portions of the cross-examination of the defendant's counsel which were left out by him.

Q. Just what were your arrangements with the Boyd Transfer & Storage Company about the shipment of these goods?

Mr. CLIFT: Objected to as being incompetent, immaterial and not binding upon the defendant.

The COURT: She may answer.

A. I told them to ship my goods to the Coast and they said they had a through car and said nothing about shipping household goods in their car and I understood that it was being shipped as freight is regularly shipped as a separate consignment.

Q. You left the matter in their hands to prepare the goods for shipment?

A. I asked them to call for the goods and offered to recompense them for boxing them to make them to comply with the requirements of the company.

Q. Did you give them authority to box the goods?

A. I gave them authority to box the dictionaries and various boxes of stationery not entered in the inventory, and I packed the trunk myself and the Underwood people boxed the typewriter.

Q. They told you that they would ship these as they shipped all their goods?

A. They said they would ship them in a through car on Tuesday or Wednesday after I made arrangements with them.

Q. Didn't you say in your direct examination that they would ship them as they did all their goods, referring to the Boyd Transfer Co.?

A. I think I said I understood they would ship them at the regular rate for freight on such goods.

Q. Did they tell you they would ship them at the regular rate, or they would ship them as they did all their goods?

A. My recollection is that they would fix it up so that it would be all right.

Q. You were content to let the matter with them on that understanding?

A. Yes, if they would put the regular valuation on them. I described the property to them so that they knew what they were doing.

Mr. CLIFT: For the purpose of the record I move to strike out the answer as being irrelevant, immaterial, a conclusion of the witness, and not binding upon the defendant.

The COURT: The last part may be stricken out. "So that they knew what they were doing," is not responsive.

Q. You can't remember the value of the silverware without
26 reference to Exhibit "A"?

A. Well, it would be somewhere between $5 and $10.

Q. Can you remember the reasonable value of the one gold bar pin?

A. I think it was about $2.50 or something like that.

Q. How about the one hand-carved barette?

A. It was part of a set. I can't remember.

Q. How about the five long shell pins?

A. I think they were about twenty-five cents apiece when new.

Mr. CLIFT: At this time I will ask the Court to strike out all of those answers on the ground that they are immaterial and irrelevant, as under the provisions of the tariff duly filed defendant is not a common carrier of that class of goods.

Motion denied.

Q. And as to those you did not know the price of?

A. I gave what I thought would be a very reasonable valuation considering what these articles sell for at the present time and considering their quality.

Q. Well, now, you don't want us to understand that all of these articles in the inventory were new, do you?

A. Why, the articles are listed according to their value at the time they were lost.

Q. Will you answer my question, please?

A. Why, no, they were not all new, the clothing was all new and the trunk, etc. Some of the manicure articles have been
27 used and things of that nature and are not put down at their cost price and regarding the silverware that was placed at a very low valuation. I do not know what they are worth. There was a silver mug gold lined and a solid silver child's set of table silverware and various pieces of household silverware and table silverware and as I remember I gave a very low valuation in the inventory as I had no way of determining just what they cost, some being gifts.

JOHN LEVAUGHN, sworn on behalf of plaintiff, testified:

By Mr. MCNAMARA:

Q. Mr. Levaughn, what is your business?

A. Connected with the Underwood Typewriter Company.

Q. In what capacity?

A. Foreman.

Q. How long have you been with that company?

A. Seven and a half years.

Q. And prior to that time had you had any experience in manufacturing typewriters?

A. I was connected with the general typewriter exchange, 21 Murray street, New York City, for a year and a half as assistant foreman, builders of all makes of machines.

Q. Including the Underwood?

A. Including the Underwood.

Q. Are you able to state what the reasonable market value
28 of a Underwood typewriter was new except for being used two weeks, on October 31, 1910?
A. What the value of it is?
Q. Answer that yes or no.
A. Yes.
Q. What was such reasonable market value?
A. $102.50.

Mr. CLIFT: Just a minute. I object to that as irrelevant and immaterial, the valuation, or any valuation in excess of $10 per hundredweight being incompetent for any purpose.
Objection overruled.

A. The value of the Underwood machine is $102.50, metal cover $2.50, is $105.
Q. Are you testifying to a machine that had been used two weeks?
A. Two weeks up to six months' time, wouldn't make any difference in the use at all.
Q. In the value?
A. In the value.

No cross-examination.

Mr. MCNAMARA: The inventory which has been offered in evidence reads as follows:

1 Underwood Typewriter	$102.50
1 Metal cover for same	2.50
1 Set Century dictionaries	75.00
1 Trunk	25.00
1 Exerciser	10.00
1 Electric lamp	2.75
1 Copy holder	1.50
1 Box envelopes (500)	2.00
29 1 Box stationery (Typewriter)	2.00
1 Pr. Shears	1.25
1 Pr. Scissors	1.00
1 Pr. Scissors (Manicure)	1.25
1 Dz. Lead pencils	.60
1 Japanese teapot	1.00
1 Set postals (25)	1.50
1 Sewing box with contents	2.50
1 Handkerchief box	.50
1 Set window curtains	10.00
Table linen	4.00
Bed linen	6.00
Bath towels	3.00
Hand towels	4.00
Silverware	5.00
1 French grammar	1.00
1 Graded course in music	.65
1 Physical culture	1.00

6	copies "System"	1.20
3	Books on synonyms, etc.	5.00
2	Books on verse	2.50
1	Nail file	.75
1	Hair brush	1.00
1	Ivory nail brush	.60
1	Set manicure preparations	1.00
2	Friction brushes	1.50
1	Gold bar pin	1.50
1	Hand carved barette	.75
5	Large shell pins (hair)	1.00
1	Jewel box	1.50
1	Long chain blue beads	2.50
	1 Turquoise necklace	3.50
30	1 Shell necklace	5.00
	1 Gold necklace	1.00
1	Jade bracelet	1.00
1	Ruby set brooch	10.00
1	Gold band ring	10.00
1	Opal ring (2 stones)	25.00
1	Brown cloth dress	30.00
1	Blue linen dress	13.50
1	Plaid gingham dress	10.00
1	Check gingham dress	10.00
1	Striped novelty dress	5.00
1	Summer coat	10.00
1	Net waist	20.00
1	Pale blue silk dress	10.00
1	Dark blue silk dress	12.00
1	Pongee dress	15.00
1	Organdy dress	10.00
1	White dress	10.00
1	White dress	12.00
1	Cotton voile dress	15.00
1	Pique dress	10.00
1	Black silk waist	5.00
1	Chamois vest	2.50
5	Yds. dress material	2.50
1	White waist	1.50
1	White waist	1.00
1	Bathing suit	1.50
1	Silk underskirt	5.00
	Underclothing	5.00
2	White princess slips	5.00
4	Serving aprons	3.50
	1 Brown auto veil	3.15
31	2 Dz. hose	5.00
	1 Pr. shoes	5.00
1	Pr. Shoes	4.00
1	Umbrella	1.00
1	Kimona	2.50

2 Office aprons	.70
1 Set sleeve protectors	.25
1 Pr. street gloves	1.25
1 Pr. Long silk gloves	1.00
1 Pr. long silk gloves	1.00
1 Pr. Rubber gloves	1.00
Total	$598.65

The plaintiff here rested.

Case opened on behalf of defendant by Mr. Clift.

A. J. GRUMMETT, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Where do you live, Mr. Grummett?
A. Mound, Minnesota, Lake Minnetonka.
Q. What is your occupation or position?
A. Making tariffs and distributing and filing same with the Interstate Commerce Commission and various state commissions.
Q. You are employed by the Great Northern Railway Company?
A. Yes, sir.
Q. What is the name, or designation of your position?
32 A. Chief tariff clerk.
Q. How long have you held that position?
A. Two years and a half.
Q. I think you have already stated the general nature of your duties.
A. Making tariffs, distributing them and filing them with the Interstate Commerce Commission and the various state commissions.
Q. Are you familiar with the tariffs showing rates in effect on October 31, 1910, over the lines of the Great Northern and its connections applying on household goods and emigrant moveables from Minneapolis to Portland, Oregon?
A. Yes, sir, I am.
Q. I hand you Def't's Ex. 1, and ask you to state in a general way what that book or pamphlet is.
A. That tariff names the rates on household goods and emigrant movables from eastern defined territory to Portland, Oregon and Seattle, and all points on the Pacific Coast.
Q. By what classification is that tariff governed?
A. The Western Classification.
Q. Does that tariff contain the rates on emigrant movables in effect on October 31, 1910, from Minneapolis to Portland, Oregon?
A. Yes, sir, on page 76.
Q. I now hand you Def't's Ex. 2, and ask you if that is the Western Classification referred to by you?
A. Yes, sir, this is the classification.
Q. Do you know whether or not Def't's Exhibits 1 and 2
33 were distributed to the agents of the defendant and the public along defendant's line of railway?

A. Yes, sir, they were distributed under my supervision.

Q. State in a general way to whom Def't's Ex. 1 west-bound transcontinental tariffs were sent.

A. They were sent to all agents on the Great Northern Railway from which the rates apply, that would be between St. Paul and Duluth, St. Paul and Minneapolis, and in fact every agent that is interested in the tariff.

Q. To whom were copies of Def't's Ex. 2, which is Western Classification, sent by you or under your direction and supervision?

A. To every agent on the Great Northern Railway.

Q. What in railway parlance is ordinarily meant by the term emigrant movables?

A. Ordinary household goods, personal effects and live stock, seed grain or seed of any kind, anything for seed, seed potatoes, anything for planting purposes, and in fact all property of intending settlers.

Q. Where in the western classification is this definition found, if you know?

A. On page 89.

Q. Are any rates provided in either Def't's Ex. 1 or 2 for jewelry, gold or silver ornaments or analagous articles?

A. No, sir.

Objected to as incompetent, irrelevant and immaterial.

34 The COURT: I am inclined to think this class of testimony is receivable at this time, at least, upon the question of what constitutes emigrant movables, as bearing upon what notice or knowledge the railroad company is chargeable with in receiving the goods. It is admitted, and we can discuss the law questions later.

Exception by plaintiff.

Mr. MCNAMARA: I want my objection to come in before the answer.

The COURT: Counsel's objection may be considered as having been taken prior to the answer.

Q. Is there any tariff rule or provision prohibiting the acceptance by the Great Northern Railway Company of such articles for transportation by freight?

A. Yes.

Mr. MCNAMARA: Just a moment. I object to that as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. MCNAMARA: I move that the answer be stricken out.

The COURT: It may be stricken out.

The question was withdrawn.

Q. Is there any provision in either of the tariffs Def't's Ex. 1 or 2 to the effect that jewelry and articles manufactured from precious metals will not be accepted by the carriers, parties to these tariffs, for transportation by freight?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

35 Exception by plaintiff.

A. The tariff contains such a provision, that they will not be taken.

Q. What tariff do you refer to?

A. Western Classification provides that watches, jewelry——

Mr. McNAMARA: Never mind that.

Q. Just where?

A. Page 185.

Q. Of Def't's Ex. 2?

A. Yes, Def't's Ex. 2.

Mr. CLIFT: Def't's Exhibits 1 and 2 offered in evidence, or so much of same as refers to rates on emigrant movables, household goods and articles of that character.

Objected to as incompetent, irrelevant, immaterial, no foundation laid and inadmissible under the pleadings.

The COURT: They may be received.

Exception by plaintiff.

Cross-examination.

By Mr. McNAMARA:

Q. Where is your office, Mr. Grummett?

A. Room 104 Great Northern Railway building.

Q. St. Paul?

A. Yes, sir.

Q. And you were there last fall?

A. Yes, sir.

Q. Now, you have stated that these tariffs and the classification were distributed to the agents of the Great Northern Railway
36 Company; do you claim to have personal knowledge yourself as to whether or not each agent on the Great Northern Railway received a copy of these Def't's Exhibits 1 and 2?

A. Yes, sir, I personally O. K. the distribution and see that the boys send them out. I don't actually send them out myself, but I see that the boys do it.

Q. You don't actually send them out, and you don't see whether they are actually in possession of the agent later on?

A. I know I am sure that they leave the office and go down to the train, but I don't know whether the baggageman throws them off or not at the depots.

Q. You don't claim to have any personal knowledge of the receipt by the different agents of copies of Exhibits 1 and 2?

A. We don't get a receipt from the agent.

Q. And you have no personal knowledge as to whether they actually receive them or not, that is, you personally?

A. I personally know that they are sent.

Q. Won't you just answer the question, Mr. Grummett? You have no personal knowledge as to whether the agents actually received copies of Exhibits 1 and 2 before you, or not?

A. No, sir.

Q. Have you?

A. No, I haven't.

Q. And you haven't at this time any personal knowledge
37 of whether or not a copy of Exhibits 1 and 2 or either of them was in the possession of the agent at Minneapolis on October 31, 1910, have you?

A. No, sir.

Q. Or in his office?

A. No, sir.

Q. And as far as you are personally concerned, you don't know, do you?

A. No, sir, I send them, that is all.

Q. Now, there was something said about those tariffs 1 and 2 being delivered to the public. Did you understand that you answered any question about delivery of those tariffs and classifications to the public?

A. Why, they are posted at all stations for the inspection of the public.

Q. That is what you meant by delivery to the agent?

A. No, they are given to the agent for the agent's use.

Q. Then another copy is supposed to be given for posting?

A. No, one copy is for posting and for the agent's use.

Q. One copy?

A. Yes, sir, one copy.

Q. And if you answered any question about those tariffs and classifications being delivered to the public, you had reference to the copies which you have just spoken of as being sent to the agents?

A. I don't think I answered a question about delivering to the public.

38 Adjourned until Wednesday morning, May 31, 1911, at 10 o'clock.

Mr. CLIFT: Were copies of tariffs Def't's Exhibits 1 and 2 forwarded to the general agent at Minneapolis?

WITNESS: Yes, sir.

Q. Mr. Grummett, you didn't forward them yourself, did you?

A. No, they were forwarded under my supervision.

Q. Do you claim now that you saw copies of those tariffs addressed to the agent at Minneapolis and delivered to the post office or express office, or however they were sent?

A. No, sir.

Q. You assume because it was your direction that it was done, is that the fact?

A. Why, I ordered them sent to the agent at Minneapolis and all other agents interested.

Q. And you assume that that was done, but don't know; is that the fact?

A. Yes, sir.

By Mr. CLIFT:

Q. Do you know whether or not any of these tariffs, any copies of these tariffs, Def't's Exhibits 1 and 2, were in fact sent from your

office to the various agents; do you know that of your own knowledge?

A. Why, we put them in a case, we have a case for every agent, but there are nearly 700 agents and the case is right in front of my eyes and I can see that case is full and I see that they go
39 out every week, but I don't know that they reach their destination. We have a checker that checks up the agents, and by that means we find out if they get the tariffs, and if they don't get them we send them over again.

GEORGE KOELLN, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Where do you live, Mr. Koelln?
A. I live in St. Paul, Minnesota, 731 Fuller Avenue.
Q. What is your business or occupation?
A. Chief clerk and rate clerk in the general agent's office, Great Northern Railway, Minneapolis.
Q. How long have you held that position, Mr. Koelln?
A. Had it for one year and probably two months.
Q. You occupied that position on the 31st of October, 1910?
A. Yes, sir.
Q. I show you first Def't's Ex. 1, which is the westbound transcontinental tariff and ask you to state whether that tariff was on file in your office, if you know, on October 31, 1910?

Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception by plaintiff.

A. The tariff was on file there for public inspection at the
40 time the shipment moved.
Q. Was that tariff in effect on that date?
A. The tariff was in effect on that date.
Q. I now show you Def't's Ex. 2, which is the western classification No. 48, and ask you to state whether or not that tariff was on file in your office on October 31, 1910?

Same objection, ruling and exception.

A. The western classification No. 48 was on file in my office at that time, during October, 1910.
Q. State whether or not extra copies of these tariffs Def't's Exhibits 1 and 2 were in your possession at that time for the purpose of distribution to the public.

Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception.

A. We have on file for public distribution on request of shippers copies of tariffs as they may require in facilitating the work, and at the same time——

Mr. MCNAMARA: I think the witness has answered the question.

Q. State whether or not copies of Def't's Exhibits 1 and 2 were in fact distributed to shippers by you.

A. They were distributed by me, both western classification No. 48 and transcontinental westbound tariff.

Q. Referring now to Def't's Exhibits 1 and 2——

A. Yes, sir.

41 Q. —can you state as to whether or not copies of these tariffs were furnished to the Boyd Transfer & Storage Company?

Objected to as incompetent, irrelevant and immaterial.

The COURT: At what time, Mr. Clift?

Mr. CLIFT: At any time prior to October 31, 1910.

Objection overruled.

A. I haven't personal knowledge of these tariffs being distributed to the Boyd Transfer & Storage Company.

Q. Were any notices to the public posted in your office on October 31, 1910, to the effect that tariffs, Def't's Exhibits 1 and 2, and other tariffs were on file therein for the inspection of the public?

A. Two notices were stuck in two conspicuous places in the office, showing that those tariffs were on file in the office.

Q. I show you Def't's Ex. 3 and ask you if that is a notice that was posted in two conspicuous places in your office on October 31, 1910?

A. I recognize this as the notice that was stuck in two conspicuous places in the office on October 31, 1910.

Q. I now show you Def't's Ex. 4 and ask you to state what that is?

A. This is a shipping order filed by the Boyd Transfer & Storage Company at the time of shipment, and signed by me—brought into the office of the general agent and signed by me.

42 Q. Can you state who made that document out, in whose handwriting it is?

A. It was made by Mr. Nachtigall, connected with the Boyd Transfer & Storage Company.

Q. Can you state whether or not Mr. Nachtigal made that document out in your office?

A. This document was made out in my presence in the general agent's office, in our office.

Q. Whose signature appears on the lower left-hand corner of that document?

A. The signature of the Boyd Transfer Company as the shipper and Mr. Nachtigall as their agent.

Q. Was that document signed by Mr. Nachtigall in your presence?

A. It was signed by Mr. Nachtigall in my presence.

Q. Did you have any conversation with Mr. Nachtigall at that time?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Mr. CLIFT: I hadn't finished the question, your Honor. I will withdraw that question and reframe it.

Q. Did Mr. Nachtigall make any statement to you, say anything to you, with reference to the contents of the shipment covered by this shipping order?

A. No, sir, he didn't.

Q. Did Mr. Nachtigall at that time make any statement to you as to the value of the goods to be transported under that for-
43 warding order?

Mr. MCNAMARA: That is objected to as incompetent, irrelevant and immaterial. The instrument, your Honor, if admissible, speaks for itself.

The COURT: He may answer.

Exception by plaintiff.

A. No, sir.

Q. State whether or not you had any information at the time this document was signed as to the nature of the contents of the shipment offered for transportation other than stated to you or other than contained in the bill of lading and forwarding order.

Objected to as incompetent, irrelevant, immaterial and calling for a conclusion.

The COURT: He may answer.

A. I had no further knowledge of what this car contained than shown on the bill of lading filed with me by the Boyd Storage & Transfer Company.

Q. Are you referring now to Def't's Ex. 4?

A. To Def't's Ex. 4, yes, sir.

Q. State whether or not you had any knowledge of the value of this shipment other than as represented by the Boyd Transfer & Storage Company in Def't's Ex. 4?

Mr. MCNAMARA: Same objection. He has already stated that the Boyd Transfer didn't say anything to him about that.

The COURT: He may answer.

A. I had no further knowledge of the value of this shipment other than that shown on the bill of lading.

44 Q. By the bill of lading, do you refer to Ex. 4?

A. Exhibit 4, yes, sir.

Q. State whether or not Def't's Ex. 4 is the original forwarding order.

A. Ex. 4 is the original forwarding order filed with me.

Cross-examination.

By Mr. MCNAMARA:

Q. You never saw the goods, did you, Mr. Koelln, described in the bill of lading?

A. I did not.

Q. You never looked for them?

A. No, sir.

Q. You made no investigation whatever as to their contents or value?

Mr. CLIFT: Objected to as incompetent and immaterial, it not being required of the carrier to make any such investigation, having a right to rely on the representations of the shipper as to the value and the nature of the goods.

The COURT: He may answer, I think.

Mr. CLIFT: Def't's Exhibits 1 and 2, or so much of the same as relate to or have any bearing on the rates therein shown on any of the articles involved in this action are offered in evidence, the same having been duly certified by the interstate commerce commission as true copies of tariffs duly filed with the commission Aug. 13th and March 18, 1910, respectively.

Objected to as incompetent, irrelevant, immaterial and no foundation laid.

45 Objection overruled. Received.

Exception by plaintiff.

Mr. CLIFT: Def't's Ex. 3, being notice to the public, posted in the office of the general agent at Minneapolis is offered in evidence.

Same objection and ruling. Received.

Mr. CLIFT: Def't's Ex. 4, being the original forwarding order or bill of lading, is offered in evidence.

Mr. MCNAMARA: Def't's Ex. 4 is objected to as incompetent, irrelevant and immaterial for the reason that it is not in any way binding on the plaintiff in this action, that a portion of it at any rate purports to be a release of the value of the shipment from its true value to $10 per hundred weight.

The COURT: It may be received as part of the papers representing the transaction at the time. The legal phase will be passed upon later.

Exception by plaintiff.

JAMES J. O'LEARY, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Mr. O'Leary, where do you live?
A. Minneapolis.
Q. What is your business or occupation?
A. Bill clerk, Great Northern.
Q. In what office are you employed?
A. In the local, Fourth avenue north and Washington.
Q. Local freight office, do you mean?
A. Yes, sir.

46 Q. How long have you held that position?
A. About two years now.
Q. What is the general nature of your duties as bill clerk?
A. Well I am to bill out the merchandise in carloads going out, on the machine, typewriter.
Q. You mean by that you make out the waybills?
A. Make out waybills on the machine.
Q. Did you hold this position on October 31, 1910?

A. Yes, sir.

Q. Can you state whether or not you billed the shipment of household goods made by the Boyd Transfer & Storage Company, consigned to the Portland Van & Storage Company, under date of October 31, 1910?

A. Yes, sir, I billed two cars for one shipment.

Q. Can you state what rate was applied to this shipment and charged by the railway company?

Objected to as incompetent, irrelevant and immaterial.

The COURT: The bill itself shows, I suppose.

Q. I show you Def't's Exs. 5 and 6, and ask you to state who made those instruments out?

A. I done the typewriter work on here, I don't know who put this on; I also put the number on the bill.

Q. Can you state what rate was applied to this shipment and charged by the railway company?

The COURT: If he knows personally, he may answer. Ask him if he knows.

47 Q. Do you know what rate was applied on this shipment per hundred pounds?

A. A rate of one dollar was applied on the shipment.

Mr. MCNAMARA: I wish you would answer that yes or no, so I can get in my objection.

Q. Just answer yes or no, whether you know or don't know.

A. Yes, I know.

Q. I wish you would state what rate was applied to that shipment.

By Mr. MCNAMARA:

Q. You were bill clerk, Mr. O'Leary, you say at the time this shipment moved?

A. Yes, sir.

Q. Did you at that time have anything to do with the making of rates?

A. I didn't make any rates, no, sir.

Q. You had nothing whatever to do with rates at all, did you, at that time?

A. I had to bill the rates after they were put on the tickets.

Q. After they were put on the ticket you put them on the waybill?

A. I had to bill them on the waybill.

Q. You bill a good many shipments, of course, in a day?

A. Yes, sir.

Q. And have done so for the past two years?

A. Yes, sir, a great many.

Q. You don't claim independent of the walbill or records that you have an independent recollection at this time what this

48 particular shipment was rated at?

A. I beg pardon?

Q. Do you claim at this time that independent of the waybill

or of the records that you have any independent recollection of what the rate was on this shipment last fall?

A. The rate hasn't been changed for some length of time.

Q. Well, but as to what the rate was, have you an independent recollection at this time aside from any record or waybill?

A. That same rate has been in effect for some length of time.

Q. I am not speaking about the rate that was in effect, Mr. O'Leary. I am speaking about the rate that was actually charged on this shipment; have you a recollection of it independent of the waybill?

A. I can say that I have. I could tell you that rate at that time, I think, if you would ask me outside of this.

Q. You could tell the rate, but you couldn't tell whether or not it had been applied to this shipment, could you?

A. I believe I don't just understand your question.

Q. Could you tell independent of your record whether that particular rate had been applied to this particular shipment, without looking at any records? Mr. O'Leary, you know that the rate on certain articles, for instance, was a dollar *on* October, 1910?

49 A. Yes.

Q. You would know that without looking anything up at the present time?

A. Yes, sir.

Q. But as to whether that particular rate was applied on a shipment of this kind at a particular time, you wouldn't know, would you?

A. Not for certain I couldn't say.

Q. You would have to look up your records and find out?

A. Yes, sir.

Q. You would have to look up your records and find out whether a particular rate was applied on this shipment of household goods?

A. I should have to look it up to make sure at that time, yes.

Mr. McNAMARA: I object to that question as incompetent, irrelevant, immaterial, no foundation laid and not the best evidence.

The COURT: I suppose that is an original bill, and he knows no more than appears on the bill; it is probably as good evidence.

By Mr. CLIFT:

Q. You stated that these waybills, Def't's Exhibits 5 and 6, were made out by you?

A. Yes, sir.

Q. Can you state whether or not these are the original waybills covering the shipment referred to?

A. Those are the waybills that I made out.

Q. Can you state whether or not these are the original ones?

50 A. Those are the waybills I made out originally.

Q. Do these waybills show the rate applied on this shipment from Minneapolis to Portland, Oregon?

A. Yes, sir, they show the rate applied.

Mr. CLIFT: Def't's Exhibits 5 and 6 are offered in evidence.

By Mr. McNAMARA:

Q. When you say that the Def't's Exhibits 5 and 6 show the rate applied, do you mean that under the head here of "Rate and Authority" is marked one dollar?

A. Yes, sir.

Q. As to what rate of freight was collected on the shipment you of course don't know?

A. No, I don't know any more than what the charges say there, what should have been collected.

Q. You don't know anything about the collection of the rate?

Mr. McNAMARA: Exhibits 5 and 6 are objected to as incompetent, irrelevant and immaterial.

The COURT: They may be received, excepting as to this endorsement.

Exception by plaintiff.

By Mr. CLIFT:

Q. I show you Def't's Ex. 4 and ask you to state if you have ever seen that document before?

A. Yes, sir.

Q. When?

A. I saw that the day the shipment was billed—these waybills were made out.

Q. State whether or not these waybills were made from
51 or on the basis of this shipping ticket, Def't's Ex. 4?

Mr. McNAMARA: Objected to as incompetent, irrelevant and immaterial; the papers are both in evidence and speak for themselves.

The COURT: He may answer.

A. These waybills are billed off this here shipping ticket.

AL. G. JOHNSON, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. What is your business, Mr. Johnson?

A. Furniture.

Q. Do you have any other occupation or business outside of that?

A. Yes.

Q. What is it?

A. Selling at auction.

Q. An auctioneer?

A. Yes, sir.

Q. How long have you been engaged in the furniture business?

A. About twenty years.

Q. Where is your place of business located?

A. 419-421 Jackson.

Q. What is the style of your firm or business?

A. The Johnson Furniture & Carpet Company.

Q. How long have you been in the business of auctioneering?

A. About twenty-nine years.

Q. What class of goods do you sell at auction ordinarily?

52 A. Mostly household furniture.

Q. What experience have you in buying, selling and shipping second hand furniture and household goods?

A. I have had all the experience that comes in that line of business that I have done.

Q. During that period of time?

A. Yes, sir.

Q. In your business of selling at auction, do you sell the contents of houses, complete, the entire contents?

A. Yes, sir.

Q. That includes everything in the line of furniture and household goods?

A. Yes, sir.

Q. As the result of that long experience, what, in your opinion, is the fair value of ordinary second-hand furniture and household goods per hundred pounds, such as is usually and ordinarily shipped by emigrants or persons moving from Minnesota for the purpose of making their future homes in the West in carload lots?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Exception.

A. About $4.

Q. $4 per hundred pounds?

A. Yes, sir.

Cross-examination.

By Mr. McNAMARA:

Q. Your answer is confined, is it not, Mr. Johnson, purely

53 to household furniture?

A. Household furniture, yes, sir.

Q. By that you mean chairs and tables and things——

A. I mean range, cooking utensils, kitchen tables, kitchen cupboards, dining table, dining chairs, sideboards or buffét, china ware that is found in the china-closets, knives and forks, sheets, pillows, table linen, napkins, carpets, rugs, iron and wooden beds, dressers, commodes, toilet ware, lace curtains and such as is found in a general household outfit.

Q. Do you know that emigrants very often take live stock with them in the cars?

A. Yes sir.

Q. And your estimate of $4 per hundredweight doesn't include live stock?

A. It doesn't.

Q. Nor lumber?

A. No, sir.

Q. Shingles or seed grain of any kind?

A. No, sir.

Q. Nothing except what you mentioned?
A. Yes.
Q. And in giving your answer you didn't have in mind the shipment of a typewriter?
A. No.
Q. Nor a wardrobe of a young lady?
A. No.

54 C. W. ISCHER, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Mr. Ischer, what business are you engaged in?
A. The furniture and auction business.
Q. How long have you been engaged in the furniture business?
A. Why, off and on for the last 12 years, 13 years.
Q. And are you engaged in business for yourself at this time?
A. Yes, sir.
Q. Where is your place of business located?
A. 232 East Seventh street.
Q. How long have you been conducting that business?
A. For the last six years, just about.
Q. How long have you been engaged in the business of auctioneer?
A. Oh, about twelve years, ten or twelve years.
Q. What is the general nature of your auction business, as to the goods you dispose of in that manner?
A. Why, mostly household goods at the present time.
Q. What experience, if any, have you had in buying and selling second-hand household goods?
A. That has been mostly my business.
Q. Mostly your business?
A. Yes, sir.
55 Q. Is that your business at the present time?
A. Yes, sir.
Q. Second-hand household goods or second-hand furniture dealer?
A. Second-hand furniture and household goods, yes, sir.
Q. And that has been your business for how many years, the dealing in second-hand household goods?
A. Well, for the last six years.
Q. What experience, if any, have you had in the shipping of household goods and emigrant movables in carload quantities?
A. We ship a few cars, yes, household goods, that is, mixed lots.
Q. As a result of your experience, Mr. Ischer, I will ask you what, in your opinion, is the fair average value of ordinary second-hand furniture and household goods per hundred pounds, such as is usually and ordinarily shipped by emigrants, persons moving from Minnesota to the Pacific coast points and the west, in carload lots?

Objected to as incompetent, irrelevant, immaterial, no foundation laid and not a subject of expert testimony.
Objection overruled.

A. Why, I should imagine $5 a hundred would cover it.
Q. State whether or not that is your best judgment of the average value of such articles?

Same objection and ruling.

A. Yes, sir.
56 Q. State whether or not that would include two second-hand pianos?
A. The capacity of the car would be what? One of the large cars?
Q. Large car, yes.
A. I should think so, yes.

Cross-examination.

By Mr. McNamara:

Q. How many pounds are you figuring on to the carload, Mr. Ischer?
A. That is, 20,000 pound car.
Q. What is the weight of a second-hand piano?
A. About 1,500 pounds.
Q. How many cars have you shipped?
A. Why, I couldn't say exactly, we ship a few.
Q. Can you give us any idea?
A. Why, no, I couldn't; it is only a matter of a few cars.
Q. Can you give us any idea at all?
A. Well, I think about four or five; I don't remember.
Q. How many years' experience have you had?
A. Six years.
Q. You have averaged less than one a year, at any rate?
A. I think so.
Q. Was that shipment made from household furniture that you had in your store?
A. Yes, sir.
Q. Furniture that you sold?
A. Yes, sir.
57 Q. To the parties moving?
A. Yes, sir.
Q. Any pianos included?
A. No, sir.
Q. Do you think that your sales to customers on those cars that you shipped amounted to only $5 per hundred pounds?
A. Yes, sir.
Q. Now you, in estimating the value at $5 per hundred pounds, are not taking into consideration any live stock being in the car?
A. No, sir.

Mr. Clift: Objected to as immaterial and irrelevant. It is not claimed that live stock comes within the valuation of $10 per hundredweight contained in the tariff.

The Court: Well, I suppose that is true, but on cross-examination, I suppose Mr. McNamara may ascertain what he does take into consideration.

Q. You were not taking into consideration any lumber?
A. No, sir.
Q. Now, Mr. Ischer, taking into consideration a car which contained a certain quantity of household goods and 2,500 feet of lumber, or instead, 25,000 shingles, 250 posts, a certain amount of trees and shrubbery, a portable house and enough grain for feeding and seeding; you wouldn't claim that such a carload as that would be worth only $5 a hundred, would you?
A. I don't know anything about lumber or seeds, or——
58 Q. So far as you know a car loaded in that manner up to a capacity of 20,000 pounds might be worth $100 a hundred or $200 a hundred?
A. I don't know anything about it.
Q. And you weren't, in giving your answer of $5 a hundred, taking into consideration the shipment of a typewriter, were you?
A. No, sir.
Q. Underwood typewriter?
A. No, sir.
Q. Or the contents of a young lady's wardrobe?
A. No, sir.

MAX DAVIS, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Where do you live, Mr. Davis?
A. Minneapolis.
Q. What business are you engaged in?
A. I am in the storage and the general merchandise business.
Q. In the general merchandise business.
A. Yes, sir.
Q. In the general merchandise business, state whether or not you buy, sell and handle second-hand household goods and furniture.
A. Yes, sir.
Q. How long have you been engaged in that line of business?
A. For the past 15 years.
Q. What is the name or style of your firm?
A. The W. & D. Railroad Warehouse & Storage Company,
59 and the Wolpert & Davis Wholesale General Merchandise.
Q. Your places of business are at Minneapolis?
A. Minneapolis.
Q. What experience, if any, have you had in shipping household goods and second-hand household goods—second-hand furniture and emigrant movables?
A. Well, we are doing shipping quite a little and second hand household goods, goods that we are getting in storage and returning to consignees.
Q. As a result of your experience, I will ask you to state what in your opinion is the fair average value of ordinary second-hand furniture, second-hand household goods per one hundred pounds, such as is usually and ordinarily shipped under this rate, in carload quantities.

Objected to as incompetent, irrelevant, immaterial, no foundation laid, and not a subject of expert testimony.

The COURT: Does he know what emigrant movables are?

Q. Do you know what is known as emigrant movables?
A. Yes, sir.

The COURT: Very well, you may answer.
Exception by Plaintiff.

A. I consider that goods of that kind should be of the value of about $7 a hundred pound weight; considering everything that the man ships from one place to the other, with everything he has got in the house, his furniture, carpets, linens, clothing or dry goods
60 of any kind, what he may have; or any other thing that he may have in the house; I consider that $7 a hundred pounds would be a good value for the owner.

Q. State whether or not you include second-hand pianos in that estimate?
A. I include pianos the same.
Q. In the line of your work do you buy and sell?
A. Yes, sir.
Q. Second hand pianos?
A. Yes, sir.

Cross-examination.

By Mr. MCNAMARA:

Q. You say $7 per hundredweight is a good value for the owner?
A. Yes, sir.
Q. Now, are you testifying, Mr. Davis, as to what you paid the owner or——
A. No, the value to the owner. If the owner should sell he couldn't get any more than that amount.
Q. You handle that class of goods that you are testifying to?
A. Yes, sir.
Q. And think your sales would average about $7 a hundred, the goods you sell?
A. Yes, sir, $7 is a good value.
Q. That is fully as much as you get for them, isn't it by the hundred pounds, that class of goods?
61 A. Yes, sir.
Q. Now, Mr. Davis, do you know what an emigrant is entitled to ship in an emigrant car?
A. Yes, sir.
Q. He is entitled to ship lumber, shingles, posts, trees and shrubbery, a portable house, grain for feeding and seeding among other things, is he not?
A. Yes, sir.
Q. Are you familiar with these tariffs and classifications here?
A. No, sir.
Q. How?
A. No, sir, I am not.

Q. You don't know a thing about them, do you?
A. No, sir.
Q. Do you ship, yourself, some?
A. The only thing I do ship would be second-hand household furniture, but I haven't shipped any lumber, of cars of that nature, that is, saying the straight carload, considering lumber or any other items, but the only thing I referred to is household furniture.
Q. So you don't know, as a matter of fact, what an emigrant is entitled to ship as emigrant movables under the tariffs and classifications?
A. No, sir.
Q. You have never examined the tariff or classification, have you?
A. No, sir.
Q. How long did you say you have been in business?
A. I have been in business for the past 15 years, since I
62 am in that business, especially.
Q. How many carloads of household goods do you suppose you have shipped?
A. I haven't shipped any carloads, but only local shipments, saying the man had household furniture that I took into storage, and there ship them again. I haven't shipped any carloads.
Q. There is lots of second-hand furniture that is worth a good deal more than $7 a hundred?
A. No, sir, $7 a hundred is considered a good value for good ordinary household goods as any man has.
Q. What class of furniture are you speaking of?
A. Saying a good class of goods, same as a man has got in the house, a dresser that costs $20, paid $20 for it. If it is new when he pays $20, the ordinary price would be only when they are new, about ten cents a pound, $10 a hundred pounds. Generally the market on second-hand goods when sold would be but 25 per cent, is all a man can get for a second-hand piece of goods, it makes no difference how old it is, even if it is used only a month or two, 25 per cent would be all a man could get on the market value.
Q. Those goods that you speak of as being worth $7 per hundred pounds second hand, what would you consider their value new in the store per hundred pounds?
A. Well, per hundred pounds, I would figure, at least, I consider about 25 per cent of the original value.
63 Q. Give us in dollars and cents what you consider those goods worth new?
A. You might say $25.
Q. Per hundred pounds?
A. Per hundred pounds where they are new.
Q. How much does the average dresser weigh?
A. An average dresser will weigh about 135 to 140 pounds.
Q. Now, you wouldn't attempt to say, Mr. Davis, that a carload of emigrant movables, consisting of 2,500 feet of lumber or 25,000 shingles, 250 posts, a certain amount of trees and shrubbery, a portable house, grain for feeding and seeding and a certain amount of

household furniture, is only worth $7 a hundred pounds, would you?

A. Well, to my estimation I never shipped any lumber or any items of that kind in a car.

Q. So you don't know anything about it?

A. I don't know anything about it.

Q. You are not testifying in reference to a car of that kind?

A. Not lumber or any other thing; all I testified to is household goods.

Q. You are not taking into account a typewriter, are you?

A. Well, I might consider that a typewriter would be in the same class of goods.

Q. Any typewriter that would be used two weeks and is worth $100 new would be a second-hand typewriter, wouldn't it?

A. It would be a second-hand typewriter.

Q. What would you consider it worth, then?

64 A. They are generally bought and sold not any more than $35 or $40.

Q. $35 and $40.

A. If it is in good condition, if it is in perfectly good condition.

Q. Have you any idea how much a typewriter weighs?

A. A typewriter, I don't think it will weigh—well, you may say it weighs 35 pounds, something like that, 25 or 35 pounds.

Q. It would be worth a dollar a pound second hand.

A. Yes, just about.

Q. Are you taking into account in giving your estimate of $7 per hundred, the contents of a young lady's wardrobe?

A. Yes, sir.

Q. And you figure that the contents of a young lady's wardrobe would average about $7 a hundred pounds?

A. Well, this maybe would be more, but there is lots that ain't worth over two cents a pound, considering every item, considering there is different items that wouldn't be over two cents a pound or two and one-half cents a pound, but considering on an average I looked through the matter carefully before I come on the stand and figured that $7 would be a good price for everything included.

Q. You don't mean you looked through a good many wardrobes carefully to estimate their value before you came on the stand?

A. Yes, I looked through clothing and linens and such,

65 beddings and feathers and a whole lot of items, and I consider that the average of $7 a hundred pounds weight would be a good figure.

Q. I want you to look over that inventory. Have you ever seen that before?

A. No, sir.

Q. Have you examined such articles as shown there before you came on the stand for the purpose of testifying?

A. I did.

ROBERT B. LETFORD, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. What is your business or occupation, Mr. Letford?
A. At the present time street commissioner for St. Paul.
Q. Have you ever been engaged in the storage business?
A. Yes, sir.
Q. What experience have you had in buying or selling or handling second-hand household goods?
A. Six years.
Q. With what firm were you connected?
A. Mercantile Storage Company.
Q. What was the nature of your connection with that firm?
A. I was a partner.
Q. They were located in St. Paul?
A. Yes, sir.

66 Q. State whether or not in connection with the conduct of the business of the Mercantile Storage Company you had any experience in the selling and buying of second-hand household goods and furniture?
A. Yes, sir, I did.
Q. Extending over a period of six years?
A. Yes, sir, about six years.
Q. Did you hear the question I asked of the witnesses who were previously on the stand, Mr. Letford?
A. Yes, sir.
Q. I will now ask you what your opinion is as to the fair average value of ordinary second-hand furniture and household goods per hundred pounds such as are shipped by emigrants in carload quantities.

Objected to as incompetent, irrelevant, immaterial, no foundation laid and not a subject of expert testimony.
Objection overruled.
Exception.

A. $5 a hundred.

Cross-examination.

By Mr. MCNAMARA:

Q. Have you shipped any carloads yourself?
A. No, sir.
Q. Have you loaded or helped load any carloads?
A. Not for shipment.
Q. Did you ever see a carload shipped and going out, and examine it?

67 A. No, sir.
Q. Did you ever examine a carload of emigrant movables?
A. Yes, sir, coming in.
Q. Coming in?
A. Yes, sir.

Q. What do they contain?
A. Oh, everything in a house.
Q. Anything outside of a house?
A. Yes, farm implements.
Q. You have had no experience in buying and selling farm implements during the six years that you speak of?
A. Yes, sir.
Q. Did you buy and sell farm implements, too?
A. Yes, sir.
Q. This furniture that you speak of as being worth $5 a hundredweight is second-hand furniture, I suppose?
A. Yes, sir.
Q. What would you consider that furniture worth new per hundred?
A. Oh, different values, a man couldn't estimate that.
Q. Well, if you can't estimate it when it is new, how can you estimate second hand?
A. What we realized at the time when we sold it.
Q. Do you get the same price for a second-hand dresser if it cost $20 new as you would if it cost $150 new?
A. Not quite.
68 Q. How much difference would you get?
A. Oh, take it on second-hand furniture, if it cost $150 you wouldn't realize as much in proportion as though it cost fifty.
Q. Well, not as much in proportion, but there would be a good deal of a difference in the selling price second hand?
A. Not very much difference.
Q. Well, your idea is a $20 dresser second-hand would be worth on the market about as much as a $150 dresser second-hand?
A. It would be worth half as much, that is, in my experience.
Q. Whom did you buy the second-hand furniture from?
A. From the railroads?
Q. From the railroad companies?
A. Yes, sir.
Q. Now, the second-hand furniture that you bought from the railroad companies, Bob, were something that they couldn't find the owner of?
A. No, a great deal of it was refused.
Q. It was refused or else they couldn't find the owner?
A. Yes.
Q. And when you say the furniture was refused, do you know on what ground it was refused, as a rule?
A. No, sir, not always.
Q. Sometimes because it was damaged in transit?
A. Sometimes, not always.
69 Q. But perhaps the majority of the times?
A. No.
Q. Half of them?
A. Oh, perhaps; yes.
Q. Well, the kind of second hand furniture that you bought and

dealt in was furniture that had been shipped over the railroad and either refused or unclaimed?

A. Yes, lost, or refused and unclaimed.

Q. Either you couldn't find the owner or the owner didn't want it?

A. Yes.

Q. And that is the kind of furniture you say is worth $5 a hundred?

A. Yes.

Q. Now, you wouldn't attempt to say, Mr. Letford, that a carload of emigrant movables, consisting of some household furniture, some farm machinery, 2,500 feet of lumber or 25,000 shingles, 250 posts, a certain amount of trees and shrubbery, portable house and grain for feeding and grain for seeding, was worth only $5 a hundred, would you?

A. Well, I never handled any cars that had any portable house in them, but outside of the portable house, I have handled everything you mention, and I venture to say you couldn't realize, nobody could, over $5 a hundred for it—outside of the portable house, that I don't know anything about.

Q. Now you say you venture to say that you couldn't realize, are you speaking of the reasonable market value of that stuff?

A. I am.

Q. Not what it is worth to the owner of the goods who is taking them out there?

A. No, it is what a person could realize on it if they sold it.

Q. Do you know the cost of a McCormack or Deering binder, for instance?

Mr. CLIFT: Objected to as immaterial and irrelevant unless it refers to second-hand.

Last question withdrawn.

Recess until 2 p. m.

Q. Mr. Letford, I believe you testified that in your opinion a carload of emigrant movables is not worth more than $5 per hundred?

A. Yes, sir.

Q. You are at the present time street commissioner of the city?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since the 15th of April.

Q. And prior to that time what was your business?

A. I was in the Quick Messenger Express.

Q. Is that the name of the company?

A. Yes, sir.

Q. What position did you occupy with them?

A. Manager.

Q. How long were you with them?

A. I was with them just eight months.

Q. What is the nature of their business?
A. General expressing.
71 Q. Throughout the city?
A. Yes, sir.
Q. Delivering packages of all kinds?
A. Yes, sir.
Q. Prior to that time what were you doing?
A. I was in the Mercantile Storage Company.
Q. That is the storage company that you mentioned here?
A. Yes, sir.
Q. In your direct examination you said you were there for some six years?
A. About six years.
Q. Prior to that?
A. I was in the box business.
Q. By the box business what do you mean?
A. Manufacturing wooden boxes and packages.
Q. How long were you in that?
A. Twelve years.
Q. You were making and selling wooden boxes?
A. Yes, sir.
Q. Selling them empty?
A. Empty.
Q. Selling the empty boxes?
A. Yes.
Q. And prior to that time what was your business?
A. Working at the trade as boxmaker.
Q. Before that you were boxmaker for how long?
A. Why, all told I was at the trade about ten years.
Q. Before the twelve years you speak of?
72 A. Yes, sir.
Q. Now, the only time that you had anything to do with household goods in the nature of buying and selling of them, was during the time you were in this storage business?
A. Yes.
Q. And all the household goods that you handled during that time you got from the railroad companies?
A. Yes.
Q. You got them by taking them off the railroad companies' hands and paying them the freight charges?
A. Paying whatever their charges were.
Q. Well, their charges for freight; freight charges weren't they?
A. Practically, yes; sometimes advance charges, I think.
Q. Well, that was also freight, wasn't it, freight on some other line?
A. I suppose; I don't know what the advance charges were, but we paid their charges.
Q. Don't you know what advance charges are?
A. Sometimes they are the value of the goods, the advance charges placed on goods. I have often done that myself.
Q. Well, I am speaking from the railroad companies' standpoint.

A. Well, we placed them on. The price of the goods would oftentimes be placed on as advance charges to the railroad company.

Q. On a freight bill?

73 A. Yes, sir, the drayage is liable to be placed on as advance charges, storage is liable to be placed on as advance charges.

Q. Transfer?

A. Yes, cartage on the freight.

Q. Where do you get the idea of the value of goods represented as advance charges?

A. Because I have often placed it here.

Q. Yourself?

A. Yes, sir.

Q. In your business?

A. Yes, sir.

Q. You have never seen the railroad company do it?

A. Yes, placed it with the railroad company.

Q. But the fact is, the goods you got and handled, you got from the railroad company for the freight charges?

A. For their charges, I don't know whether they were freight charges altogether, or what they were; they were for their charges.

Q. You know in nine cases out of ten they were the freight charges on the goods in transit?

A. Possibly.

Q. Isn't it a fact?

A. No, I say it was their charges; I don't know whether they were altogether freight charges or what they were; they were for their charges.

Q. You never bought 500 pounds of household goods in your life in any other manner, did you?

A. No, sir.

Q. Now, you never took over a car of emigrant movables for

74 freight charges, or in any other manner?

A. Took over lots of them.

Q. Did you buy them?

A. From the railroad company, yes.

Q. How many cars?

A. About thirty.

Q. About thirty?

A. Yes, sir.

Q. What did they consist of?

A. Of everything imaginable.

Q. Well, give us an idea?

A. Why, household goods, clothing, farm implements, musical instruments, grains, hay, feed, in fact anything that is shipped, machinery of all kinds, trunks, personal effects, practically anything that a person would ship.

Q. Anything that a person would ship?

A. Yes, sir.

Q. Now, do you know what can be shipped over a railroad as emigrant movables?

A. Not as emigrant movables, no; I couldn't specify.

Q. Have you any idea?

A. No.

Q. Do you understand that you are testifying as an expert as to the value of a carload of emigrant movables?

A. I am testifying to the best of my ability what I know.

Q. Do you understand you are called to testify as an expert on a car of emigrant movables?

75 A. I understand that I am to testify to the value of second-hand furniture and such like stuff that I have handled.

Q. Now you don't know, Mr. Letford, do you, what can be shipped as emigrant movables in a car?

A. No, I don't.

Q. Then you don't claim to be an expert as to the value of a carload of emigrant movables?

A. Not emigrant movables.

Q. And if you said a carload of emigrant movables are not worth more than $5 a hundred, you didn't mean to testify as to emigrant movables?

A. I testified as to second-hand furniture and such like.

Q. That is all you intended?

A. Yes, sir, they may ship something in emigrant goods that I don't know anything about; I am not familiar with that branch of the shipping.

Q. Well, your testimony of $5 per hundred applies for second-hand furniture?

A. Such second-hand furniture and such stuff as I have handled from the railroads, including all farm machinery and household goods, and clothing, and personal effects and everything of that nature.

Q. I show you a paper marked "Inventory of shipment" and ask you if you claim to be an expert on the value of the articles shown in there?

Mr. CLIFT: I object to that as incompetent, irrelevant, immaterial; irrelevant to any of the issues in this case, for the reason

76 that the question is not as to the value of this particular shipment, but as to the value of goods which are entitled to be transported under this rate. Articles may have been shipped by the plaintiff and form a part of the car involved in this action which were worth many thousands of dollars, diamonds, jewelry, other articles of great value. The only question we are interested in in this case is as to the validity of rates as applying to property entitled to transportation. It is entirely immaterial as to what value was actually placed on this individual shipment, the only question being as to the carload as a whole. We are not interested in less than carloads or parts of carloads.

The COURT: I suppose to test the witness' knowledge they may ask a question that is not based upon the testimony in the case. He may answer.

A. I have handled a great many of the articles shown in here.

Q. (Last question read.)

A. Not all of them.

By Mr. CLIFT:

Q. Was this Mercantile Storage a licensed warehouse under the warehouse laws of this state?

A. No, it was a partnership. No we had no license, done a general storage.

Q. You were a public warehouse?

A. Public warehouse.

Q. The goods that you received from the railroad company were received in the capacity of a public warehouseman?

A. Yes, sir.

77 Q. Received by you to be held and sold under the warehouse laws of this state??

A. Yes, sir.

By Mr. MCNAMARA:

Q. Of course you didn't mean that you turned over to the railroad company anything but their freight charges after you sold them?

A. Sometimes we did.

Q. Well, your arrangement generally was that so long as they got their freight charges the balance belonged to you?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. MCNAMARA: I move to strike out all the testimony of this witness which contains or purports to refer to the value of carloads of emigrant movables.

Motion denied.

Exception by plaintiff.

RICHARD E. REDNER, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. What business are you engaged in, Mr. Redner?

A. Furniture business.

Q. With what house are you connected?

A. Empire Furniture Company.

Q. How long have you been in the service of that company?

A. I guess about two years.

78 Q. What was your business prior to that?

A. Furniture business.

Q. How long have you been engaged in the furniture business?

A. About eighteen years.

Q. What experience if any have you had in the buying and selling of second hand furniture and household goods?

A. About sixteen years.

Q. What experience have you had if any in connection with the shipping of second hand household goods and furniture, in carload lots as emigrant movables?

A. Just what we have sold to dealers, that is all.

Q. Just what you have sold to dealers?

A. Yes, sir, carload, half carload, two carloads.
Q. How long a time did you say you were engaged in handling second hand household goods?
A. About sixteen years.
Q. Where was your place of business, in St. Paul?
A. About ten years in St. Paul.
Q. What was the style of the firm you were with?
A. Well, I was about seven years with the Standard.
Q. And prior to that?
A. And I was, I guess, three or four years with Ischer down there.
Q. Have you ever been called upon to appraise the value, determine the value——
79 A. Yes.
Q. —upon examination of second-hand household goods and furniture?
A. Yes, sir.
Q. By whom?
A. Well, I don't remember now the names.
Q. Do you mean individuals?
A. Individuals yes, and other ways, too.
Q. As a result of your experience, what in your opinion is a fair average value of ordinary second-hand furniture and household goods per hundred-weight?
A. About $5.

Mr. McNamara: Before that answer I would like to interpose my objection as incompetent, irrelevant, immaterial, no foundation laid and not a subject of expert testimony.
The Court: He may answer.

Q. About $5 per hundredweight?
A. Yes, sir.
No cross-examination.

J. V. Perkins, sworn on behalf of defendant, testified:

By Mr. Clift:

Q. Where do you live, Mr. Perkins?
A. Hastings, Minnesota.
Q. What business are you engaged in?
A. I am in the employment of the feed, flour and coal business at the present time.
Q. In the city of Hastings?
A. Yes, sir.
80 Q. How long have you been engaged in that business?
A. About thirty years.
Q. What experience have you had in buying, selling and handling second-hand farm machinery, farm implements, lumber, fence posts, portable houses and shingles?
A. Why, I have handled more or less right along all the time.
Q. State whether or not you are now engaged in the buying and selling of second-hand farm implements.
A. We do occasionally have to buy second-hand implements.

Q. How about second-hand vehicles?
A. We buy them, too.
Q. What experience have you had with reference to the value of grain?
A. We handle that right along, too.
Q. I now ask you to state what in your opinion is the fair average value of ordinary second-hand farm implements per hundredweight?

Objected to as incompetent, irrelevant, immaterial, no foundation laid and not a subject of expert testimony.
Objection overruled.
Exception by plaintiff.

A. Why, second-hand machinery we figure all the way from 25 to 50 per cent of the value of the new, according to the condition of it, and new machinery is worth about $6 a hundred.
Q. And second-hand is worth 25 per cent of that?
81 A. 25 to 50 per cent.
Q. Then, can you state in round figures as to the value of second-hand——
A. From $1.50 to $3 per hundred would be a good fair value of second-hand machinery. The new is worth about $6 per hundred; fence posts is worth about 50 cents a hundred; lumber is worth about $2 a hundred.
Q. Grain?
A. Well, oats is worth about $1.50, wheat is worth about $2.
Q. Second-hand vehicles?
A. Well, about four or five dollars a hundred, that is, buggy vehicles, wagons, such things as that is worth about five and one-half cents or $5.50 a hundred new.
Q. What would be the fair value of second-hand wagons per hundredweight?
A. $2.50 a hundred.
Q. Lumber?
A. Lumber is worth about $2 a hundred.
Q. Shingles?
A. Well, shingles would be worth about $3; shingles is lighter material.
Q. Portable house, if you can make any estimate ?
A. Well, a portable house is a lot of lumber cut and fit, to be put together to build a house; I should judge the lumber is worth $2 a hundred, the labor shouldn't be worth more than a dollar more to manufacture, it would be about $3 a hundred.
Q. Trees and shrubbery; are you able to say about that?
82 A. No.

Cross-examination.

By Mr. McNAMARA:

Q. Did you figure those matters up before you came on the witness stand, or did you just reel it off as the questions were asked?
A. As I have been sitting here I saw what you were getting at,

and I know the approximate weight of all this machinery, wagons, buggy and all such things as that.

Q. Just sitting there you knew you were going to be asked those questions, and you figured it out?

A. I had a good basis to figure on. I know about what a wagon weighs, I know what a binder weighs, I know what it costs.

Q. Then the figuring you did was while you were listening to the other witnesses?

A. I didn't know what I was coming for until I got here.

Q. Were you subpœnaed here as a witness?

A. Yes, sir.

Q. Was a subpœna served on you?

A. No, sir.

Q. What did you mean by saying you were subpœnaed?

A. Well, I was called up by telephone to take a man's place that had to be away.

Mr. CLIFT: That had been subpœnaed.

Q. You were called by telephone to come up here?

83 A. Yes, sir.

Q. You were not subpœnaed?

A. No, sir.

Q. Do you know the value of a typewriter per hundred pounds?

A. No, sir.

Q. Do you know the value of a young lady's wardrobe per hundred pounds?

A. No, sir.

Objected to as not proper cross-examination.

Objection sustained.

F. W. NACHTIGALL, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Where do you live, Mr. Nachtigall?

A. Minneapolis.

Q. What is your business?

A. I am in the transfer and warehouse business.

Q. You are connected with the Boyd Transfer & Storage Company?

A. Yes, sir.

Q. What position do you occupy with that company?

A. I am the traffic manager.

Q. How long have you been in the service of the Boyd Company?

A. Two years.

Q. What in a general way is the nature of your duties?

A. I have in charge the loading and unloading of the

84 cars in and out of our freight depot, that is, the duties assigned to the men in charge of the depot are—I have charge of the men in charge of the depot, who do the loading and unloading.

Q. What if anything do you have to do with the shipping of goods for your firm?

A. I make the arrangements with the individual shippers for the shipment of their goods. I attend to the billing of all the carload shipments that we ship to western and eastern points.

Q. I show you Def't's Ex. 4 and ask you if you ever saw that before?

A. Yes, sir, I have.

Q. In whose handwriting is that document?

A. Part of it is in my handwriting.

Q. In whose handwriting are the words, "Released to $10 per hundred weight"?

A. My handwriting.

Q. Placed there by you?

A. Yes, sir.

Q. The entire document is in your writing with the exception of the signature of Mr. Smitton?

A. Yes, sir.

Q. Where was that document made out?

A. The commercial office of the Great Northern Railway Company, Minneapolis.

Q. On what date?

A. October 31, 1910.

Q. What do you call that instrument, that document?

A. That is a shipping order.

Q. Was the bill of lading made out by you?

85 A. Yes, sir.

Q. As a matter of fact, it is made in triplicate?

A. Yes, sir.

Q. The top sheet is the bill of lading?

A. Yes, sir.

Q. The second sheet is what?

A. Memorandum.

Q. For whose use?

A. For our use.

Q. And the third copy is the shipping order?

A. Is the shipping order retained by the railroad company.

Q. And after this document has been made out by you in Mr. Smitton's office, what do you do with it?

A. Place it on file in our office with the papers on these cars.

Q. After it was made out what did you do towards securing the signature of the railway company on it?

A. I turned it over to Mr. Smitton, his chief clerk, for his signature.

Q. Was the signature of the Boyd Transfer & Storage Company which purports to have been made by you placed there by you?

A. Yes, sir.

Q. Did you make any representation or statement to the agent of the Great Northern Railway Company at that time other than appears on this bill of lading, as to the nature of this shipment?

A. I did not.

Objected to as incompetent, irrelevant and immaterial.
86 Overruled.
Exception by plaintiff.

Q. Did you make any statement or representation to the agent of the Great Northern other than appears on this bill of lading with reference to the value of this shipment?

Same objection and ruling.

A. I did not.

Q. State what conversation took place between you and the agent of the Great Northern Railway Company on this occasion, if any.

Objected to as incompetent, irrelevant, immaterial and hearsay.
Objection overruled.
Exception.

A. I did not have any at all.

Q. Is the Boyd Company a corporation or a partnership?

A. Corporation.

Q. What is the general nature of the business conducted by them?

A. Forwarding, distributing of carloads, storage of household goods and general transfer.

Q. Is the Boyd Transfer & Storage Company in any way connected with the Great Northern Railway Company?

A. Only as a shipper.

Q. Is the warehouse of the Boyd Transfer & Storage Company or shipping depot located on the line of the Great Northern Railway Company?

A. No, sir, it is not.

Q. On what line is it located?

87 Objected to as immaterial.
Objection overruled.

A. Chicago Great Western Railway trackage.

Q. I think you stated that you have supervision over the loading of these cars, loading and shipping of cars of emigrant movables?

A. I issue the orders to the depot as to the loading.

Q. What is the average weight of carload shipments made by your company, pool or assembled-car shipments, from Minneapolis to Western points?

A. Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception.

A. The average weight of our pool car shipments will run about twenty-two or twenty-three thousand pounds per shipment.

Q. What is the average weight of the carloads, the amount that you get into a car?

Mr. McNamara: Same objection.
Objection overruled.

A. About 20,000 pounds, a little over.

Q. Did you have anything to do, Mr. Nachtigall, with the forwarding of the plaintiff's shipment, which is involved in this action?

A. Yes, I did.
Q. Can you state what the weight of her property was?
A. The weight of her shipment was 545 pounds.
Q. Under whose supervision was the car loaded in which
88 Miss O'Connor's property was contained?
A. The loading itself was supervised by our depot foreman, that is, trucking the goods into the car.
Q. That is Mr. Newell?
A. Yes, sir.
Q. What was your reason for declaring the value of this entire shipment to be $10 per hundred weight?

Objected to as incompetent, irrelevant and immaterial.
Question withdrawn.

Q. As a result of your experience in this business, state whether or not $10 per hundredweight represents the fair average value of ordinary second-hand household goods and furniture, and other articles such as is ordinarily loaded and shipped by your firm?

Objected to as incompetent, irrelevant, immaterial, no foundation laid, not a subject of expert testimony.
Objection overruled.

A. In my experience in this business I found that $10 valuation on emigrant movables is a very fair valuation.
Q. I show you Def't's Ex. 1, and ask you to state if you are familiar in a general way with the rates on emigrant movables, household goods, etc., contained in that tariff?
A. Yes, sir, I am.
Q. Were you furnished with a copy of that tariff?

89 Objected to as incompetent, irrelevant and immaterial.
Objection overruled.

A. We were furnished with a copy of it, and have it in our office.
Q. Was that copy in your possession on October 31, 1910?
A. Yes, sir.
Q. I show Def't's Ex. 2 and ask you if a copy of that tariff was furnished you by the Railway Company?
A. We have also a copy of that.
Q. And did have on October 31, 1910?
A. Yes, sir.
Q. I think you said you were familiar with these various rates contained therein?
A. Yes, sir.
Q. State whether or not at the time you billed this shipment you knew that under the provisions of this tariff, property entitled to transportation under the classification of emigrant movables at a rate of $1 per hundredweight from Minneapolis to Portland, Oregon, had to be of the declared value of $10 per hundredweight.

Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception by plaintiff.

A. Yes, sir.
Q. You did know that?
A. Yes, sir.

Q. State whether or not you knew at that time that there
90 was a rate of $1.60 per hundred weight in existence over the Great Northern from Minneapolis to the Pacific coast?

A. I knew there was such a rate.
Q. Including Portland; on household goods and emigrant movables based on full common carriers' liability?

Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception by plaintiff.

A. I knew there was such a rate in existence.
Q. Did you see this car after it was loaded?
A. I did not.

Cross-examination.

By Mr. McNAMARA:

Q. Did you see the car before it was loaded?
A. Empty, you mean?
Q. Yes.
A. I don't think that I did, no.
Q. You didn't see it at all?
A. No, sir.
Q. When did you first see the goods of the plaintiff which are involved in this action?
A. I didn't see them.
Q. You never saw them at all?
A. No, sir.
Q. So, of course you didn't know what they were?
A. How is that?

Q. You never saw them and didn't know what they were.
91 A. I only knew what they were from the record.

Q. And notwithstanding that fact, you went down to the depot and attempted to release the value of them to $10 a hundred by putting that on the bill of lading, Def't's Ex. 4; is that true?

A. I billed them in the usual—I billed the carload in the usual manner, as I bill all of our emigrant movable cars.

Q. You bill all your emigrant movable cars at this purported released rate of $10 per hundredweight, without reference to the value of the goods?

A. We do.

Q. And that is just what you did in this case, billed it at the released rate of $10 per hundred without reference to the value of the articles in the car?

A. That is the way it was billed.

ARTHUR A. NEWELL, sworn on behalf of defendant, testified:

By Mr. CLIFT:

Q. Mr. Newell, what is your business?
A. Warehouse foreman.
Q. By whom are you employed?
A. Boyd Transfer & Storage Company.
Q. At Minneapolis?
A. At Minneapolis.
Q. How long have you held that position?
A. About nine years.
Q. During that entire time you have been foreman?
92 A. Yes, sir.
Q. State in a general way the nature of your duties as warehouse foreman for the Boyd Company.
A. Well, we load and unload cars, household goods and other things.
Q. Where is this work done?
A. Tenth avenue south and Washington, Minneapolis, in the warehouse.
Q. And this warehouse is located where with reference to the railroad tracks?
A. On the Great Western tracks.
Q. Has the Great Northern got a track into your warehouse?
A. No, sir.
Q. Are you familiar with this shipment of emigrant movables which was shipped by your firm on October 31, 1910, consigned to the Portland Van & Storage Company?
A. Yes, sir.
Q. State under whose direction or supervision that car was loaded?
A. Under mine.
Q. And it was loaded at this freight depot?
A. Yes, sir.
Q. Can you state the weight of the entire shipment, the entire carload shipment?
A. 22,955 pounds.
Q. Do you know the weight of Miss O'Connor's property?
A. Yes, sir; 545 pounds.
Q. Can you state what the average weight of a carload
93 shipment of second hand household goods, emigrant movables, made by you to western points is?

Objected to as incompetent, irrelevant and immaterial.
Objection overruled.
Exception.

A. About 20,000 pounds.
Q. These cars were loaded by you?
A. Yes, sir.
Q. Who weighs the shipments?
A. I do.

Q. State in a general way how carload shipments of this kind of goods are packed by you for shipment to the Pacific coast?

A. Well, the goods are boxed, crated, some of them packed in barrels, some burlapped.

Q. Mostly covered?

A. Covered.

Q. Now, as I understand, this shipment was made in two cars?

A. Yes, sir.

Q. Do you know the car numbers?

A. No, I don't remember the car numbers.

Q. Do you remember the number of the car that was loaded full or nearly full?

A. I wouldn't want to say.

Q. In any event, after this car in which the larger part of the shipment was contained was loaded at your depot, what was done with it?

A. It was taken by the Great Western and delivered to the Great Northern.

94 Q. At that time the loading had been completed?

A. Yes, sir.

Q. Were the doors sealed?

A. No, the doors weren't sealed when they left the warehouse.

Q. After cars of this kind are completely packed and loaded, is it possible for one making an inspection of such cars to determine what the contents are?

Objected to as incompetent, irrelevant, immaterial and calling for a conclusion.

The COURT: Let him describe how they were packed.

Q. I wish you would state, Mr. Newell, how this car was packed near the side doors, or near any of the doors.

A. Well, the car was packed full in the door, in all ends the car was full.

Q. Were the articles near the door covered or uncovered?

A. Covered.

Q. Was the car loaded to its full capacity?

A. Yes, sir.

Q. Was any representation or statement made by you to the Great Northern or any of its agents as to what this car actually contained?

Objected to as incompetent, irrelevant and immaterial.

The COURT: He may answer as far as he knows.

A. There was no statement made.

Q. Was any statement made by you?

95 A. No, sir.

Q. To any of the representatives of the Great Northern as to the value of this shipment?

A. No, sir.

No cross-examination.

F. W. NACHTIGALL, recalled for further cross-examination, testified:

By Mr. MCNAMARA:

—. Mr. Nachtigall, I want to ask you whether or not you know whether this bill of lading that you speak of was issued by the Great Northern road before or after the car was actually delivered to them?

A. I am not in a position to state whether it was or not.

Q. The bill of lading might have been issued by the Great Northern for the car before it was actually loaded, might it not?

A. No, I never present a bill of lading for a railroad company's receipt until after it is loaded.

Q. But as to whether it had been delivered to the Great Northern or whether it was still on the Great Western tracks when the bill of lading was issued, you don't know?

A. I don't know.

Defendant rests.

Plaintiff rests.

Testimony closed.

96 Mr. CLIFT: The defendant now moves the Court to strike from the record all testimony of the plaintiff in this case relating to instructions given by her to her agent the Boyd Transfer & Storage Company, or her private arrangement with the Boyd Transfer & Storage Company relative to the shipping of her goods on the ground that same is incompetent, irrelevant and immaterial, it appearing conclusively in this case that the railway company, the defendant herein, received no notice of such instructions and is not charged with notice or knowledge of instructions of the plaintiff to her agent with reference to such shipment; that it relied on the representations made by the shipper in lawful possession of the goods as to the value and the character of the goods, and having the right to rely on such representation, the defendant cannot be bound by any private arrangement between Miss O'Connor, the plaintiff here, and the Boyd Transfer & Storage Company.

The COURT: Have you any other motions that you wish to submit at this time?

Mr. CLIFT: The defendant now moves the Court to instruct the jury to return a verdict in favor of the plaintiff in the sum of $54.50 and interest upon the ground that upon all the evidence and the law applicable thereto the plaintiff is not entitled to recover in excess of that sum, for the reason that under the provisions of defendant's tariffs duly filed and published pursuant to that certain act of congress entitled "An act to regulate commerce," approved February 4, 1887, as amended, which act and amendments thereto
97 were passed under authority conferred on Congress by section 8, article 1 of the Constitution of the United States, said tariffs being in evidence in this case, defendant is not liable to the plaintiff in excess of the value of her property as declared by her at the time same was shipped; the said valuation being accepted by the defendant as the true value and the rate of freight fixed in accord-

ance therewith. Also for the reason that the plaintiff having at the time of shipment declared the value of her property to be not in excess of $10 per hundredweight for the purpose of securing the benefit of a lower rate of freight, is now estopped to claim any greater value; also for the reason that the evidence conclusively shows that the contract of shipment in which the value of the property was declared to be not in excess of $10 per hundredweight was fairly entered into between plaintiff, through her agent, the Boyd Transfer & Storage Company, and the defendant, and was just and reasonable, and is therefore binding upon the plaintiff.

Adjourned until the morning of June 1, 1911, at 10 o'clock.

The COURT: It appears in this case the Boyd Transfer & Storage Company acted as the agent for an undisclosed principal in making this shipment; it also appears in evidence that this Boyd Transfer & Storage Company was the plaintiff's agent for the delivery of these goods for shipment and for whatever usually and naturally belonged to the making of such shipment, including the giving of in-
98 formation necessary for making the shipment. My view is that the plaintiff was bound by the act of her agent in representing the character and value of the goods and in selecting the manner and stipulating the terms of the shipment in so far as the contract was fairly entered into and was reasonable and just, and for this reason and on this ground, the evidence in the case of secret instructions between the plaintiff and the Boyd Transfer & Storage Company requiring or directing or informing them that she was willing to pay the full transportation charges upon this shipment is stricken out. The case will proceed upon the remaining elements in the case. The jury are instructed to disregard the secret instructions between the plaintiff and the Boyd Transfer & Storage Company in so far as they have been stricken from the record.

Exception by plaintiff.

The COURT: Under the holding of our supreme court in the Ostroot case the Court feels that the question as to whether or not this contract was fairly entered into and was just and reasonable is a question for the jury rather than for the Court. The Court does not undertake to pass upon the merits of this question one way or the other, but leaves the question to be decided by the jury upon the evidence which has been received in the case. The motion will be denied.

Exception by defendant.

Requests were handed to the Court by defendant.

The COURT: The first and second requests I think will be
99 given in substance, the third will be denied, the fourth will be denied, the fifth will be denied, the sixth will be given, and the seventh will be given. The second is given with the understanding she will be bound by such a contract provided it was fairly entered into and was just and reasonable.

Exception by defendant.

The COURT: The only question the Court will submit to the jury

will be the question whether this contract was fairly entered into and was just and reasonable.

Mr. CLIFT: The defendant excepts to the refusal of the Court to grant the other requests.

Recess until 2 P. M.

Mr. MCNAMARA: I wish to note especially an exception to the ruling of the Court in striking out Plffs. Ex. B, and the testimony of plaintiff in reference thereto.

The case was summed up to the jury by respective counsel and Court charged the jury as follows:

Charge.

Gentlemen: Gertrude O'Connor sues in this action against the Great Northern Railway Company as a common carrier to recover damages for the breach of a contract to transport from Minneapolis to Portland, Oregon, certain property designated as emigrant movables, alleged to have been destroyed through the negligence of this defendant railway company.

100 The defendant railway company admits having received these goods for transportation. The defendant railway company admits that these goods were destroyed while in its possession, and through its fault. The defendant alleges that at the time these goods were delivered to it for transportation that this plaintiff, acting through her agent, released the value of these articles down to $10 per hundredweight in consideration of being granted by the railway company a special freight rate for transporting these goods to the point of their destination; and the railway company stands here today and says that "we admit the plaintiff is entitled to recover in an amount not exceeding the valuation which she herself, acting through her agent, placed on these goods at the time she delivered them to the railway company for transportation," and the railway company offers at this time to give to plaintiff judgment for $54.50, including interest and her costs and disbursements in full satisfaction of her claim. This the plaintiff refuses to accept, and in answer, or in reply, denies that she is bound by this contract of release which has been referred to upon the trial.

Upon the evidence in this case and the admissions of the parties with reference to the negligence of the defendant, there is no dispute; that is admitted. There is no dispute upon the question of the goods having been destroyed, for that is admitted, and the only purpose of this trial is to determine the measure or extent of the defendant's liability to this plaintiff under this contract of shipment, and

101 that is the sole issue which you have to determine upon the evidence in this case.

Under the written contract under which the property was shipped, it is provided that the value of the property is released to $10 per hundredweight. It further provides the amount of any loss or damage for which the defendant shall be liable shall be computed on the

basis of the value of the property, being the bona fide invoice price to the consignee, including the freight charges, if prepaid, at the place and time of shipment under this bill of lading unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation. This contract, in substance, limits the liability of this defendant for the total loss of the goods shipped to the amount of $10 per hundred pounds, or $54.50 in all, provided that contract is binding upon this plaintiff.

Now, the plaintiff comes in and says this contract is not binding upon her, and she does not propose to be held by it, and she says as a matter of defense to this contract that it was not fairly entered into that it is not just and that it is not a reasonable contract. The burden of proof in this case rests with the defendant upon this branch of the case. It devolves upon the defendant to prove that this contract was fairly entered into and was reasonable and just under all the circumstances, and unless the defendant sustains the
102 burden of proof—establishes such facts by a fair preponderance of the evidence, then the plaintiff would prevail in this case.

Now, under the law, such a contract as this, when fairly entered into and when it is just and reasonable, is binding on the parties and such contracts are accepted as a proper mode of securing a due proportion between the amount which the defendant carrier may be responsible for and the freight charges the defendant carrier receives, and is accepted as a proper means of protecting the carrier against extravagant valuations by the owners in case of loss. In other words, under the law, parties to an agreement of this kind may in good faith agree upon the value of the property presented for transportation, and they may fairly agree upon the damages recoverable in accord with the supposed value of the property, and they may make such an agreement in advance of the actual shipment of the property. It is also the right of a carrier of freight to require the shipper who brings to the carrier freight for transportation to disclose the character and value of the property presented for transportation and to make such disclosure fairly where the character and value of the property are not apparent and well known to the carrier, and this is proper, to the end that proper care may be taken of the property while in the possession of the carrier, and in order that proper charges may be made for the transportation, which in many instances may depend upon the value of the property as well as upon other instructions.

Now, it appears in this case that the plaintiff in making
103 this shipment acted through and employed one Boyd Transfer & Storage Company to forward the goods. The defendant claims that in that employment the plaintiff made the storage company her agent, and that the plaintiff is bound by the arrangements made by the Boyd Transfer & Storage Company for the transportation of these goods by the railway company, including a stipulation

in the contract releasing and limiting the defendant's liability to an amount not exceeding $10 per hundred pounds. You are instructed that the act of the representative of the Boyd Transfer & Storage Company in declaring the value of the entire shipment of which plaintiff's property was a part to be not in excess of $10 per hundredweight, was the act of the plaintiff herself, as she had constituted the Boyd Company her agent in the matter of shipping her goods, and is bound by any legal contract entered into between that company and the defendant for the transportation of the goods in question.

Under the law enacted by congress, known as the Interstate Commerce Act, it was the duty of the defendant to file with the Interstate Commerce Commission tariffs or schedules showing rates, fares and charges in effect for the transportation of property over its lines from points in one state or territory to points in any other state or territory of the United States, together with any and all rules, regulations, privileges, facilities or conditions to which such rates, fares and charges were subject, and after such tariffs or schedules were
104 filed and published as required by the law referred to, the rates, fares and charges contained therein became legally established and the plaintiff through her agent, the Boyd Transfer & Storage Company, in accepting one of the rates shown in such tariffs or schedules, and declaring the value of her property to be not in excess of $10 per hundredweight, accepted such rate subject to all the conditions, limitations and restrictions shown in the tariff in connection with such rate, and is bound thereby if such contract of acceptance was fairly entered into and was just and reasonable. So we come to the question in this case, was this contract fairly entered into and was it just and reasonable?

Now, it is not claimed in this case that there was any deceit or coercion practiced upon the plaintiff's agent at the time the contract was entered into to induce him to make this particular contract. On the other hand, the agent admits that he was informed as to the different rates and tariffs and that he made this contract advisedly and that he wrote this limitation in the contract himself; and in this connection it is proper for you to consider whether the amount specified in this contract limiting the liability purports to be an agreed valuation entered into knowingly and purposely by the parties, or whether the fixing of that limitation in value was an attempt on the part of the defendant carrier to limit the amount of recovery to a certain amount irrespective of the actual value of the articles and without regard to the wishes and desires of the plaintiff acting
105 through her agent. If this contract limiting the liability represented the wishes and the desires of the plaintiff, acting through her agent at that time, then the contract will be binding upon the plaintiff.

If you believe from the evidence that this limitation was a mere arbitrary valuation put in there simply for the purpose of limiting the defendant's liability, without regard to the wishes or desires of the plaintiff, acting through her agent, then it would not be a just and reasonable limitation upon the contract, and under those cir-

cumstances the defendant would be liable for the reasonable market value of such of the goods as she would be entitled to recover for under the evidence in this case, and under such circumstances the defendant's liability would not be limited to the value of the articles at $10 per hundredweight as specified in the contract, but if the contract was fairly entered into and the party plaintiff was not deceived or coerced, and if it was not entered into collusively, and if the valuation was either based upon some consideration or some examination, or if it was the mutual and fair understanding of the parties that the goods were to be shipped under that stipulated valuation, then under those circumstances the plaintiff would be bound by the contract. In this connection a further question is presented upon the evidence in this case, did the plaintiff act fairly and without fraud or imposition upon the defendant in representing the character and value of these goods at the time they were delivered for transportation? If the plaintiff, through her agent, was guilty
106 of any fraud or imposition by misrepresenting the nature or value of the articles, then she would destroy her right to indemnity because she had attempted to deprive the carrier of the right to be compensated in proportion to the value of the articles and the consequent risk assumed.

It appears in this case that the defendant was not a common carrier of jewelry and articles manufactured from precious metals, and the plaintiff in attempting to secure transportation for the various articles of jewelry and silverware which formed a part of the shipment involved in this case practiced a deceit or imposition on the defendant, and you are therefore instructed that the plaintiff cannot recover of the defendant for the value of any such articles of jewelry. You are further instructed that if you find the contract of shipment entered into between the Boyd Transfer & Storage Company and the defendant, in which the value of the entire shipment of which plaintiff's property formed a part was declared to be not in excess of $10 per hundredweight, was fairly entered into and was just and reasonable, it would be your duty to return a verdict in favor of the plaintiff in the sum of $54.50 and interest, it appearing from the undisputed evidence that her goods weighed 545 pounds.

If, after careful consideration of all the evidence you should believe that the defendant has sustained the burden of proof, and has established by the greater weight of the evidence in the case that this contract limiting its liability was fairly entered into and
107 was just and reasonable, then the plaintiff would be entitled to recover a verdict in her favor of $54.50, otherwise your verdict would be in favor of the plaintiff for the full amount of her claim, $598, less the value of the jewelry, which, under the instructions I have already given you, she would not be entitled to recover for under any circumstances.

Counsel calls my attention to this contract in which it appears that the value of the goods were released to $10 per hundred instead of "declared to be not in excess of $10 per hundredweight." You will bear that in mind in arriving at your conclusion.

Mr. CLIFT: Defendant excepts to that portion of the Court's

charge in which the jury is instructed to return a verdict in favor of the plaintiff in the event they find that the contract was not fairly entered into, just and reasonable, to the extent of the full amount claimed, less the value of the jewelry, on the ground that it is a question for the jury to determine from all the evidence as to what the actual value of the property would be.

Defendant also excepts to that portion of the Court's charge in which the jury is instructed to determine the question of whether the declared value or released value of $10 per hundredweight was an arbitrary valuation placed thereon by the defendant or an agreed valuation, on the ground that there is no evidence to support a finding that the valuation was an arbitrary valuation.

Defendant also excepts to that portion of the Court's charge
108 in which the question of whether there was any consideration for the limited liability contract involved in this case, it appearing from the undisputed evidence that the consideration sufficient to support this contract is provided for and shown in the tariffs now in evidence.

Defendant also excepts to the failure of the Court to charge the jury that the defendant was not required to determine for itself the character and value of the goods involved in this shipment and had a right to rely on the representations of the shipper as to the value and character of the goods as contained in the shipping order.

The COURT: I think I instructed the jury—if I didn't do so I will do so now—that if entitled to recover an amount in excess of $54.50, the plaintiff could only recover the fair, reasonable market value of the goods at the place and time of shipment as disclosed by the evidence in the case excepting, of course, the jewelry.

The Court will state further, that in accepting this shipment for transportation the defendant had a right to rely upon the representation of the plaintiff acting through her agent as to the character and value of the articles shipped, provided that they were not of such a character and form as to put the defendant upon inquiry as to what they actually were.

The jury retired to deliberate, and thereafter returned for further instructions:

The COURT: Gentlemen, I understand that you request to
109 be given the list of the articles of property which the plaintiff seeks to recover for, in which the valuations are placed by her upon this property. That list is attached to the deposition which was used in this case and is a part of the plaintiff's testimony. Under the law we are not permitted to let you have that list without the consent of the counsel. This list was read to you, and the values thereon were also read to you. Also bearing upon the question of those values was the testimony given by the plaintiff herself upon cross-examination where she was examined specifically as to certain of the items. The Court is not in a position to allow you to take that list with the valuations attached thereto, for the reason it would be submitting to you one side of the controversy only, and you would not have before you the testimony of the plaintiff on cross-examination with reference to the values in respect to these several

items. You will therefore remember the testimony as best you can, as to the values of these several items, as appears from all the evidence in the case, and try to arrive at the valuations, if you reach this point in the case, based upon the testimony in the case as you heard it from the lips of all the witnesses, and as you have heard it in the testimony. You may retire at this time.

A stay of sixty days was entered.

The jury returned a verdict in favor of plaintiff, in the sum of $560.

110 *Defendant's Requests to Charge.*

Defendant requests the Court to give the jury the following instructions:

1. The act of the representatives of the Boyd Transfer & Storage Company in declaring the value of the entire shipment, of which plaintiff's property was a part, to be not in excess of $10.00 per cwt., was the act of the plaintiff herself, as she had constituted the Boyd Company her agent in the matter of shipping her goods and is bound by any lawful contract entered into between that company and the defendant for the transportation of the goods in question. Given.

2. Under the law enacted by Congress, known as the Interstate Commerce Act, it was the duty of the defendant to file with the Interstate Commerce Commission tariffs or schedules showing rates, fares and charges in effect for the transportation of property over its lines from points in one state or territory to points in any other state or territory of the United States, together with any and all rules, regulations, privileges, facilities or conditions to which such rates, fares and charges were subject, and after such tariffs or schedules were filed and published as required by the law referred to, the rates, fares and charges contained therein became legally established, and the plaintiff through her agent, the Boyd Transfer & Storage Company, in accepting one of the rates shown in such tariffs or schedules and declaring the value of her property to be not in excess of
111 $10 per cwt., accepted such rate subject to all the conditions, limitations and restrictions shown in the tariff in connection with such rate, and is bound thereby (if such contract of acceptance was fairly entered into and was just and reasonable.) Given, with the clause in parenthesis added by the court, as it appears in the 8th paragraph of the court's charge.

3. I instruct you that the plaintiff having through her agent, the Boyd Transfer & Storage Company, declared the value of her goods to be not in excess of $10 per cwt. for the purpose and with the intention of securing the benefit of a lower rate of freight, is now estopped to claim that the value of the goods shipped was more than the value stated by her for the purpose of securing the lower rate and the undisputed evidence being that her property weighed 545 lbs. she is entitled to recover only the sum of $54.50, and interest. Denied.

4. I further instruct you that the contract of shipment entered

into between the Boyd Transfer & Storage Company and the defendant was a lawful and valid one and under the evidence in this case and the provisions of the law, known as the Interstate Commerce Act, the plaintiff cannot recover in excess of the sum of $54.50 and interest. Denied.

5. I instruct you that under the evidence in this case and the law regulating commerce between the states, known as the Interstate Commerce Act, it is your duty to return a verdict in favor of the plaintiff in the sum of $54.50, and interest. Denied.

6. I instruct you that if you find that the contract of shipment entered into between the Boyd Transfer & Storage Company
112 and the defendant, in which the value of the entire shipment, of which plaintiff's property formed a part, was declared to be not in excess of $10 per cwt. was fairly entered into and was just and reasonable, it is your duty to return a verdict in favor of the plaintiff in the sum of $54.50 and interest, it appearing from the undisputed evidence that her goods weighed 545 pounds. Given.

7. It conclusively appears from the evidence in this case that defendant is not and was not on October 31st, 1910, a common carrier of jewelry and articles manufactured from precious metals and that the plaintiff in attempting to secure transportation for the various articles of jewelry and silverware which formed part of the shipment involved in this case practiced a fraud on the defendant, and I therefore charge you that she cannot recover damages from the defendant for the value of such articles. Given.

(Title of Cause.)

Stipulation for Settlement of Case.

It is hereby stipulated and agreed that the foregoing official transcript, consisting of ninety-six (96) pages of typewritten matter, is correct and complete and may be signed and allowed as a settled case without further notice.

It is further stipulated that all exhibits used in evidence at
113 the trial of said action, being Defendant's Exhibits 1 to 6, inclusive, shall be considered as incorporated in and made a part of said settled case.

Dated Oct. 19, 1911.

T. P. McNAMARA,
Attorney for Plaintiff.
W. L. CLIFT,
Attorney for Defendant.

(Title of Cause.)

Order.

The foregoing official transcript, consisting of seventy-six (76) pages of typewritten matter, and exhibits referred to therein, being Defendant's Exhibits 1 to 6, inclusive, having been by me examined

and found conformable to the truth and containing all the evidence, rulings and proceedings had upon the trial of the above entitled action, the same is hereby allowed for and as a settled case herein.

Dated Oct. 19, 1911.

OLIN B. LEWIS,
District Judge.

Endorsed: Filed Dec. 28, 1911. Matt Jensen, Clerk, by G. P. Ritt, Deputy.

(Title of Cause.)

Notice of Alternative Motions.

To Messrs. Jas. Mattimore and Thos. P. McNamara, Attorneys for Plaintiff:

You will please take notice that at the Chambers of the
114 Honorable Olin B. Lewis, one of the judges of the above named court, in the Court house in the City of St. Paul in said county on the 23rd day of September, 1911, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, the defendant herein will apply to the said court for an order directing the entry of judgment in favor of the plaintiff and against the defendant in the sum of $54.50, together with interest on said amount from November 6, 1910; notwithstanding the verdict heretofore rendered in plaintiff's favor for $560.00, which motion will be made upon a settled case and upon all the files and records of this action and said motion will be based upon the ground that upon all the evidence and the law applicable thereto plaintiff is not entitled to recover in excess of said sum of $54.50 with interest.

And you will further take notice that said defendant in the event that the aforesaid motion for judgment is denied will at said time and place further move the court to vacate and set aside the verdict in the above entitled action and grant a new trial of said action, which motion will also be made upon a settled case and upon all the files and records herein and will be based on the following grounds:

1. That said verdict is contrary to law.
2. That said verdict is not justified by the evidence.
3. That said verdict awards excessive damages, appearing to have been given under the influence of passion or prejudice.

115 4. Errors of law occurring at the trial and either excepted to at the time or assigned as error in this notice of motion, as follows:

a. The court erred in overruling defendant's objections to the introduction of evidence as to the condition of plaintiff's goods at the time same were shipped, the extent of their use and the reasonable market value of same.

b. The court erred in overruling defendant's objection to the following question asked witness Koelln, on cross-examination:

"You made no investigation whatever as to their contents (of shipment) or value?"

c. The court erred in denying defendant's motion for a directed verdict in favor of the plaintiff in the sum of $54.50 and interest.

d. The court erred in refusing to give the jury the following instructions requested by the defendant, to-wit:

"Under the law enacted by Congress, known as the Interstate Commerce Act, it was the duty of the defendant to file with the Interstate Commerce Commission tariffs or schedules showing rates, fares, and charges in effect for the transportation of property over its lines from points in one state or territory to points in any other state or territory of the United States, together with any and all rules, regulations, privileges, facilities or conditions to which such rates, fares and charges were subject, and after such tariffs or schedules were filed and published as required by the law referred to, the rates, fares and charges contained therein became legally established,
116 and the plaintiff through her agent, the Boyd Transfer & Storage Company, in accepting one of the rates shown in such tariffs or schedules and declaring the value of her property to be not in excess of $10 per cwt. accepted such rate subject to all the conditions, limitations and restrictions shown in the tariff in connection with such rate, and is bound thereby."

k. The court erred in refusing to give the jury the following instructions requested by the defendant, to-wit:

"I instruct you that the plaintiff having through her agent, the Boyd Transfer & Storage Company, declared the value of her goods to be not in excess of $10 per cwt. for the purpose and with the intention of securing the benefit of a lower rate of freight, is now estopped to claim that the value of the goods shipped was more than the value stated by her for the purpose of securing the lower rate and the undisputed evidence being that her property weighed 545 lbs. she is entitled to recover only the sum of $54.50 and interest."

l. The court erred in refusing to give the jury the following instructions requested by the defendant, to-wit:

"I further instruct you that the contract of shipment entered into between the Boyd Transfer & Storage Company and the defendant was a lawful and valid one and under the evidence in this case and the provisions of the law, known as the Interstate Commerce Act, the plaintiff cannot recover in excess of the sum of $54.50 and interest."

117 *m.* The court erred in refusing to give the jury the following instructions requested by the defendant, to-wit:

"I instruct you that under the evidence in this case and the law regulating commerce between the states, known as the Interstate Commerce Act, it is your duty to return a verdict in favor of the plaintiff in the sum of $54.50 and interest."

n. The court erred in charging the jury as follows:

"It is proper for you to consider whether the amount specified in this contract limiting liability purports to be an agreed valuation entered into knowingly and purposely by the parties, or whether the fixing of that limitation in value was an attempt on the part of the defendant carrier to limit the amount of recovery to a certain amount irrespective of the actual value of the articles and without

regard to the wishes and desires of the plaintiff acting through her agent. If this contract limiting the liability represented the wishes and the desires of the plaintiff, acting through her agent at that time, then the contract will be binding upon the plaintiff.

If you believe from the evidence that this limitation was a mere arbitrary valuation put in there simply for the purpose of limiting the defendant's liability, without regard to the wishes or desires of the plaintiff acting through her agent, then it would not be a just and reasonable limitation upon the contract, and under those circumstances the defendant would be liable for the reasonable
118 market value of such of the goods as she would be entitled to recover for under the evidence in this case, and under such circumstances the defendant's liability would not be limited to the value of the articles at $10 per hundred weight as specified in the contract."

You will please take further notice that immediately before the hearing of these motions defendant will apply to the court (Lewis, J.) for an order settling and allowing as a settled case herein defendant's proposed case heretofore served upon you, together with such amendments as you may propose and the court allow.

Yours respectfully,

W. L. CLIFT,
Defendant's Attorney.

(Title of Cause.)

Order.

After hearing counsel for the respective parties,

Ordered (1) That defendant's motion for judgment, notwithstanding the verdict be and is in all things denied; (2) that defendant's motion for a new trial be granted unless plaintiff shall within ten days after filing of this order file her consent that the verdict returned herein shall stand in the amount of $533.40 -nd that she release any claim in excess thereof.

St. Paul, December 28, 1911.

(Signed) OLIN B. LEWIS,
District Judge.

119 *Memorandum.*

It is not contended in this case that the established rates and schedules duly declared and published by the Interstate Commerce Commission can be attacked in this court. The question here is whether the contract which seeks to apply a certain rate to the specific articles of merchandise belonging to plaintiff was fairly entered into and was just and reasonable, under all circumstances. This question is ordinarily one of fact, and where it appears that contracts limiting the common law liability of a common carrier for the loss of goods are fair, just and reasonable and secure a due proportion between the amount for which the carrier may be re-

sponsible and the freight charges it receives and only protect the carrier from unfair valuations in case of loss, they are upheld, although such contracts in effect limit the common law liability of the carrier. But a mere arbitrary valuation of the goods made simply for the purpose of limiting the carrier's liability will not be sustained as just and reasonable within this rule.

Ostroot v. N. P. Ry. Co., 111 Minn. 504.

It does not appear in this case that the valuation placed upon the plaintiff's goods was based upon an examination of the goods or made with any reference to their value, but was purely arbitrary. This case, I believe, comes within the rule announced in

Ostroot v. N. P. Ry. Co., supra.

Hanson v. Great Northern Ry., 121 N. W. 78.

120 It appears that certain articles of jewelry and silverware of the value of $65.25 were included in the shipment without defendant's knowledge. Under the instructions of the Court the jury should have deducted this amount from plaintiff's claim. The jury apparently made a partial deduction, not sufficient, however, to cover this amount and the verdict is reduced accordingly.

Filed 12/28/1911.

(Signed) LEWIS, *J.*

Endorsed: Filed Feb. 28, 1911. Matt Jensen, Clerk, by G. P. Ritt, Deputy.

(Title of Cause.)

Consent to Reduce Verdict.

The plaintiff in the above entitled action hereby consents that the verdict returned in said action be reduced to and stand in the amount of five hundred thirty-three and 40/100 ($533.40) dollars, and plaintiff hereby releases defendant from any claim in excess of said amount on account of any of the matters alleged in the complaint in the above entitled action.

Dated at St. Paul, Minnesota, December 29, 1911.

T. P. McNAMARA &
JAMES MATTIMORE,
Attorneys for Plaintiff,
215-217 *Germania Life Bldg., St. Paul, Minn.*

Endorsed: Filed Dec. 29, 1911. Matt Jensen, Clerk, by G. P. Ritt, Deputy.

121 (Title of Cause.)

Notice of Appeal.

You will please take notice that the above named Great Northern Railway Company, defendant, appeals to the Supreme Court of the

State of Minnesota from the order of this court made and filed in the above entitled action on the 28th day of December, 1911, denying defendant's motion for judgment in favor of the plaintiff in the sum of fifty-four and 50/100 dollars ($54.50) and interest, notwithstanding the verdict rendered by the jury in said action in favor of plaintiff for five hundred sixty ($560) dollars; and granting defendant's motion for a new trial of said action, unless plaintiff would consent to a reduction in the amount of said verdict from five hundred sixty ($560) dollars to five hundred thirty-three and 40/100 ($533.40) dollars, and from the whole thereof.

Dated, January 24, 1912.

W. L. CLIFT,
Attorney for Defendant.

To James Mattimore and Thos. P. McNamara, Attorneys for plaintiff, and Matt Jensen, Esq., Clerk of the District Court.

122 *Waiver of Bond on Appeal.*

Bond on appeal is hereby waived and it is hereby stipulated that all proceedings in this action may be stayed until the final determination of this appeal.

Dated January 25, 1912.

JAMES MATTIMORE AND
T. P. McNAMARA,
Attorneys for Plaintiff.

Due and personal service of the within is hereby admitted this 25th day of Jan., 1912.

JAS. MATTIMORE AND
T. P. McNAMARA,
Attorneys for Plaintiff.

Served and filed with Clerk of Court, Jan. 26, 1912.

Endorsed: Filed Jan. 26, 1912. Matt Jensen, Clerk, by G. P. Ritt, Deputy.

123 *Appendix.*

Defendant's Exhibit No. 1 is Trans-Continental Freight Bureau West-bound Tariff No. 4-H, (R. H. Countiss' Interstate Commerce Commission No. 928) which, on pages 76 and 77, shows rates in effect on October 31, 1910, applying on household goods, personal effects, etc., in carload and less than carload quantities, from Minneapolis, Minnesota, to Portland, Oregon, as follows:

Household Goods (including Second-hand Furniture, Stoves, etc., also Personal Effects), P. P. or guaranteed, $3.00 per cwt. less than carloads.

NOTE.—Will not apply on Bicycles, Vehicles nor Boats of any description.

Household Goods (including Second-hand Furniture, Stoves, etc., also Personal Effects), the value of which is declared by the shipper not to exceed $10.00 per 100 lbs., P. P. or guaranteed, $2.00 per cwt., less than carloads.

NOTE.—Will not apply on Bicycles, Vehicles nor Boats of any description.

Household Goods, N. O. S. (including Second-hand Furniture [not to exceed two Pianos], Stoves, etc., also Personal Effects), charges must be prepaid or guaranteed, min. C. L. wt. 20,000 lbs. (See Notes 1, 2, 3 and 4. below), $1.60 per cwt. carloads.

Household Goods, N. O. S. (including Second-hand Furniture [not to exceed two Pianos], Stoves, etc., also Personal Effects), the value of which is declared by the shipper not to exceed $10.00 per 100 lbs., charges must be prepaid or guaranteed, min. C. L.
124 wt. 20,000 lbs. (See Notes 1, 2, 3 and 4, below), $1.00 per cwt., carloads.

NOTE 1.—Provision for Household Goods (carloads), will apply on Second-hand Furniture (not to exceed two Pianos), Stoves, etc.; Second-hand Farm Machinery and Second-hand Vehicles (not including Automobiles, Hearses or similar Vehicles, nor Boats of any description); Live Stock, not to exceed ten (10) head; Trees and Shrubbery; Lumber and Shingles (not to exceed in the aggregate the equivalent of 2,500 feet of Lumber or 25,000 Shingles); Fence Posts (not to exceed 250 in number); or a Portable House, but does NOT include Doors, New Furniture, Sash, Blinds, Provisions, Grain (unless intended for seed or for feeding animals while in transit), General Merchandise nor Iron Safes.

NOTE 2.—Shipments must contain a sufficient quantity of Furniture to make intention of a permanent residence at destination evident.

NOTE 3.—With carload Household Goods, etc., containing Horses, Mules or Cattle, one man in charge of same will be passed one way. No return passes will be given. Such shipments will be subject to the usual Live Stock Contract.

NOTE 4.—The above rates are conditioned upon Live Stock being shipped under declared valuation as follows:

For Horses, Ponies, Mules or Jacks	Each	$100.00
Colts (under 1 year)	"	50.00
Oxen, Bulls or Steers	"	50.00
Cows	"	30.00
Calves	"	10.00
Hogs	"	10.00
Sheep or Goats	"	3.00

125 Defendant's Exhibit No. 2 is The Western Classification No. 48, Interstate Commerce Commission No. 6, (being the classification in effect on Oct. 31, 1910), which contains, on pages 89 and 90 thereof, the following definition of "Emigrants' Movables":

"The term 'Emigrants' Movables' will apply to property of an

intending settler only and will include Tools and Implements of Calling (including Hand and Foot Power Machines, but not including Machinery driven by Steam, Electricity, Gas, Gasoline, Compressed Air or Water, other than Agricultural Implements); Second-hand Store Fixtures of merchants; Second-hand Vehicles (not including Self-Propelling Vehicles, Hearses and similar Vehicles); Live Stock, not to exceed ten (10) head (subject to declared valuations and premium charges shown under 'Live Stock'); Trees and Shrubbery; Lumber and Shingles; Fence Posts; one Portable House; Seeds for planting purposes; Feed for Live Stock while in transit, and Household Goods; but does not include General Merchandise, nor any articles, whether herein enumerated or not, which are intended for sale or speculation."

On page 185 of this exhibit, it is provided in Item No. 22, that jewelry, gold and silver coin, articles manufactured from precious metals, and valuable papers, will not be accepted for transportation.

Defendant's Exhibit No. 3 is the following notice to the public, which was on October 31, 1910, posted in two conspicuous places in the office of defendant's general agent at Minneapolis, Minnesota:

126 Post this notice in two conspicuous places in each waiting room and freight office.

Notice to the Public.

Great Northern Railway, Kootenai Valley Railway.

Complete public files of this Company's tariffs are located in the cities of St. Paul and Minneapolis, Minn., Sioux City, Ia., Helena, Mont., and Seattle, Wash.

The rate and fare schedules applying from or at this station and indices of the company's tariffs are on file in this office, and may be inspected by any person upon application and without the assignment of any reason for such desire.

The agent or other employee on duty in the office will lend any assistance desired in securing information from or interpreting such schedule.

H. A. JACKSON,
Assistant Traffic Manager.

S. J. ELLISON,
General Passenger Agent.

Defendant's Exhibit No. 4 is the "Shipping Order" or bill of lading covering the shipment involved in this action, a true copy of which is hereto annexed for convenient reference.

Defendant's Exhibits Nos. 5 and 6 are the way-bills issued by the defendant covering the shipment of which the plaintiff's property formed a part, which way-bills show that rate of $1.00 per cwt. based on a valuation of not to exceed $10.00 per cwt. was applied on said shipment by the carrier.

(Here follows bill of lading marked pages 127 and 128.)

129 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

GERTRUDE O'CONNOR, Plaintiff,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Judgment.

Pursuant to the order for judgment duly made and filed in the above entitled action on the 28th day of December, A. D. 1911,

Now on motion of T. P. McNamara and James Mattimore, said attorneys, it is hereby adjudged that the plaintiff herein recover of said defendant, Great Northern Railway Company, the sum of Five Hundred Sixty-nine and 15/100 Dollars ($569.15) with thirty-nine and 2/100 Dollars ($39.02) costs and disbursements, in all amounting to six hundred eight and 17/100 Dollars ($608.17).

Signed this 28th day of June, A. D. 1912.

MATT JENSEN, *Clerk,*
By G. A. JOHNSON, *Deputy.*

130 STATE OF MINNESOTA,
County of Ramsey:

District Court, Second Judicial District.

GERTRUDE O'CONNOR, Plaintiff,
vs.
GREAT NORTHERN RAILWAY COMPANY, Defendant.

Notice of Trial.

You will please take notice that the above named Great Northern Railway Company, defendant, appeals to the Supreme Court of the State of Minnesota from the judgment of this court entered and docketed in the above entitled action on the 28th day of June, 1912, in favor of the plaintiff and against the defendant in the sum of Six Hundred eight and 17/100 Dollars ($608.17) and from the whole thereof.

Dated this 28th day of June, A. D. 1912.

W. L. CLIFT,
Attorney for Defendant.

To James Mattimore and Thos. P. McNamara, Attorneys for plaintiff, and Matt Jensen, Esquire, Clerk of the District Court.

Bond on appeal is hereby waived and it is hereby stipulated that all proceedings in the above entitled action may be stayed until the final determination of the appeal.

Dated June 29th, 1912.

JAMES MATTIMORE &
T. P. McNAMARA,
Attorneys for Plaintiff.

Endorsed: Filed Jul- 20, 1912. Matt Jensen, Clerk, by G. P. Ritt, Deputy.

131 STATE OF MINNESOTA,
County of Ramsey:

Second Judicial District.

I, Matt Jensen, Clerk of the District Court, Ramsey County, and State of Minnesota, do hereby certify and return to the Honorable the Supreme Court of said State, that I have compared the foregoing paper writing with the original Complaint, Amended answer, Reply, Settled case, Notice of alternative motions, Order, Consent to reduce verdict, Notice of appeal, Judgment and appeal in the action therein entitled now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said Court, at St. Paul, this 9th day of August, A. D. 1912.

[District Court Seal.]

MATT JENSEN, *Clerk.*
By G. P. RITT, *Deputy.*

132 17859. State of Minnesota Supreme Court, October Term, A. D. 1912. Gertrude O'Connor, Respondent, vs. Great Northern Railway Company, Appellant. Assignments of Error. Filed Sep. 10, 1912. I. A. Caswell, Clerk. W. L. Clift, Attorney for Appellant, St. Paul, Minn.

133 *Assignments of Error.*

1. The Court erred in denying defendant's motion for a directed verdict in favor of the plaintiff in the sum of $54.50 and interest, upon the ground that upon all the evidence and the law applicable thereto the plaintiff was not entitled to recover in excess of that sum:

a. By reason of the provisions in defendant's tariffs duly filed with the Interstate Commerce Commission and published pursuant to the act of Congress entitled "An Act to Regulate Commerce," approved February 4, 1887, as amended (ff. 285, 286).

b. For the reason that the plaintiff at the time of shipment declared the value of her property to be not in excess of $10.00 per cwt., was estopped to claim a higher value (f. 287).

c. For the reason that the evidence conclusively showed that the contract of shipment, in which the value of the property was declared to be not in excess of $10.00 per cwt., was fairly entered into and was just and reasonable (f. 287).

2. The court erred in denying defendant's motion for judgment in favor of the plaintiff in the sum of $54.50 and interest, notwithstanding the verdict rendered by the jury in her favor for $560.00, upon the ground that upon all the evidence and the law applicable thereto plaintiff is not entitled to recover in excess of $54.50, with interest (f. 238).

3. The court erred in denying defendant's motion for a new trial on the ground that the verdict was not justified by the evidence and was contrary to law (f. 339).

134 4. The court erred in refusing to instruct the jury as requested by defendant, as follows:

"Under the law enacted by Congress, known as the Interstate Commerce Act, it was the duty of the defendant to file with the Interstate Commerce Commission tariffs or schedules showing rates, fares and charges in effect for the transportation of property over its lines from points in one state or territory of the United States to points in any other state or territory of the United States, together with any and all rules, regulations, privileges, facilities or conditions to which such rates, fares and charges were subject, and after such tariffs or schedules were filed and published as required by the law referred to, the rates, fares and charges contained therein became legally established, and the plaintiff through her agent, the Boyd Transfer & Storage Company, in accepting one of the rates shown in such tariffs or schedules and declaring the value of her property to be not in excess of $10 per cwt., accepted such rate subject to all conditions, limitations and restrictions shown in the tariff in connection with such rate, and is bound thereby" (ff. 342-343).

5. The court erred in refusing to instruct the jury as requested by defendant, as follows:

"I instruct you that the plaintiff having through her agent, the Boyd Transfer & Storage Company, declared the value of her goods to be not in excess of $10 per cwt. for the purpose and with the intention of securing the benefit of a lower rate of freight, is now estopped to claim that the value of the goods shipped was more than the value stated by her for the purpose of securing the lower rate and the undisputed evidence being that her property

135 weighed 545 lbs. she is entitled to recover only the sum of $54.50" (f. 344).

6. The court erred in refusing to instruct the jury as requested by defendant, as follows:

"I further instruct you that the contract of shipment entered into between the Boyd Transfer & Storage Company and the defendant was a lawful and valid one and under the evidence in this case and the provisions of the law, known as the Interstate Commerce Act, the plaintiff cannot recover in excess of the sum of $54.50 and interest" (f. 345).

7. The court erred in refusing to instruct the jury as requested by defendant, as follows:

"I instruct you that under the evidence in this case and the law regulating commerce between the states, known as the Interstate Commerce Act, it is your duty to return a verdict in favor of the plaintiff in the sum of $54.50 and interest" (f. 346).

8. The court erred in charging the jury as follows:

"It is proper for you to consider whether the amount specified in this contract limiting liability purports to be an agreed valuation entered into knowingly and purposely by the parties, or whether

the fixing of that limitation in value was an attempt on the part of defendant carrier to limit the amount of recovery to a certain amount irrespective of the actual value of the articles and without regard to the wishes and desires of the plaintiff acting through her agent. If this contract limiting the liability represented the wishes and desires of the plaintiff acting through her agent at the time, then the contract will be binding upon the plaintiff.

136 If you believe from the evidence that this limitation was a mere arbitrary valuation put in there simply for the purpose of limiting the defendant's liability, without regard to the wishes or desires of the plaintiff acting through her agent, then it would not be a just or reasonable limitation upon the contract, and under those circumstances the defendant would be liable for the reasonable market value of such of the goods as she would be entitled to recover for under the evidence in this case, and under such circumstances the defendant's liability would not be limited to the value of the articles at $10 per hundred weight as specified in the contract" (ff. 347, 348, 349).

9. The court erred in entering judgment in favor of plaintiff upon said verdict.

W. L. CLIFT,
Attorney for Appellant,
St. Paul, Minn.

137 17859. State of Minnesota Supreme Court. Gertrude O'Connor, Respondent, vs. Great Northern Railway Company, Appellant. Opinion. Filed Jan. 24, 1913. I. A. Caswell, Clerk. October Term, A. D. 1912. Per Curiam.

138 17859.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1912.

No. 162.

GERTRUDE O'CONNOR, Respondent,
v.
GREAT NORTHERN RY. CO., Appellant.

Per Curiam:

This case was before this court at the last term on appeal from an order denying an alternative motion for judgment notwithstanding the verdict or for a new trial. O'Connor v. Great Northern Ry. Co., 118 Minn., 223. The decision there made recognized the rule that a contract fairly made fixing a value upon goods shipped at less than the true value, for the purpose of obtaining a lower freight rate and limiting the recovery in case of loss to the amount so fixed, is valid and binding. It was held, however, that under the evidence disclosed, the question whether such a contract was fairly

made, was one of fact, and that the finding of the jury that no such contract was in fact made was sustained. The case is before us now on the same record on appeal from the judgment since entered. The former decision is the law of the case and is controlling here.

It is urged that the decision of the U. S. Supreme Court in Adams Express Co. v. Kroninger, C. B. & Q. Ry. v. Miller and C. St. P. M. & O. Ry. Co. v. Latta, just decided, make the alleged contract in this case a binding contract as a matter of law. We do not so understand these decisions. The existence of such a contract was not in controversy in any of these cases. These de-
139 cisions do not decide that the transactions here disclosed make, as a matter of law, an unimpeachable contract. What they hold is, that when such a contract is made out, its enforcibility is determined, not by the local law of the state, but by Federal law, so that a provision of a state constitution or statute making such contracts void, or the decision of a state court that such contracts are against public policy, is not controlling. In Adams Express Co. v. Kroninger, supra, Justice Lurton states the common law rule adopted by the Federal Supreme Court as follows:

"It has therefore become an established rule of the common law as declared by this court in many cases that such a carrier may by a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage to an agreed value made for the purpose of obtaining the lower of two or more rates of charges proportional to the amount of the risk."

In speaking of the effect of the Acts of Congress, the court further says:

"The statutory liability, aside from the responsibility for the default of a connecting carrier in the route, is not beyond the liability imposed by the common law as that body of law applicable to carriers has been interpreted by this court as well as many of the states."

We conceive that the effect of these decisions is simply to make the common law rule, as it is above declared, the uniform rule throughout the United States. This rule has been recognized in this state for many years. Alair v. N. P. Ry. Co., 53 Minn., 160, 19 L. R. A., 764, brief. The decision on the former appeal is merely an application of the rule to the facts of this case.

Judgment affirmed.

139*a* (Reported in 118 Minnesota, page 223.) No. 17624. State of Minnesota, Supreme Court. Gertrude O'Connor, Respondent, vs. Great Northern Ry. Co., Appellant. Opinion and Syllabus. Filed Jun. 14, 1912. I. A. Caswell, Clerk. April Term, A. D. 1912. Holt, J.

139*b* 17624.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1912.

No. 142.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Syllabus.

1. In this case involving an attempt to limit, by contract, the common law liability of a common carrier for the negligent loss of goods shipped, it is held that the evidence received made it a question of fact whether the contract was fairly made and was just and reasonable.

2. The assignments of error do not challenge any ruling on the admission or exclusion of evidence.

3. The shipment was billed by plaintiff's agent as emigrant movables: Held that the designation covered plaintiff's goods, consisting of Typewriter, dictionary, wearing apparel, trunk and personal effects, and was not a falsification or misrepresentation which estops plaintiff from claiming the actual value of those goods; nor was such designation of the goods a violation of the Interstate Commerce Act; nor does that act, under the evidence in this case, require the court to instruct the jury that the limitation of liability in the bill of lading was valid.

Orders affirmed.

139*c* 17624.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1912.

No. 142.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Opinion.

Plaintiff sued the defendant, a common carrier, for the value of goods entrusted to the carrier for shipment and lost or destroyed in transit through negligence. She recovered a verdict for the full value. The defendant moved that judgment be entered for plaintiff for $54.50 notwithstanding the verdict of $560.00, and in case of a

denial thereof that a new trial be had. The court denied the motion for judgment, and also the one for a new trial on condition that plaintiff release all of the verdict in excess of $533.40. Plaintiff released and defendant appeals.

The Boyd Transfer Company is a corporation engaged in the business implied by the name, in Minneapolis, Minn. It packs, loads and ships goods in carload lots to the West and to the East. By collecting small lots of goods from different shippers sufficient to fill a car, car lot rates are obtained, thereby reducing the freight rate somewhat to such shippers. Prior to October 24, 1910, plaintiff engaged the Boyd Transfer Company to call at her apartments in Minneapolis for her goods, to pack and box such as were not already prepared for shipment, and to load them with those of other shippers on a railway car for transportation to Portland, Oregon.

139*d* The Boyd Company called for the goods, which consisted of a typewriter already boxed, wearing apparel, some jewelry and toilet articles, a set of the Century Dictionary, some stationery, bed and table linen, some books, an "exerciser," electric lamp, curtains and small personal belongings of a lady, which were all contained in the trunk packed by plaintiff, except the dictionary, books and stationery, which were boxed by the Boyd Company. Plaintiff testified that she informed the Boyd Company that the goods she had were new, and described the property to them, that she was willing to pay the regular rate for transportation; that the Company said they had a through car and said nothing about shipping household goods therein, and she understood that her goods were shipped as freight is regularly shipped, as a separate consignment; and that the Boyd Company would ship the way they did all their goods. The Company filled a car with about 22,000 lbs. of goods from different owners. Among these were plaintiff's, which weighed 545 lbs. The shipping clerk of the Boyd Company made out a shipping bill or bill of lading, wherein the goods were designated as emigrant movables, and he also wrote below, "released to $10.00 per cwt." The shipping clerk of the defendant accepted and signed the bill of lading so made out, neither one of these clerks having a word of conversation about the goods, nor having any personal knowledge of their character or value. Whether this bill of lading was made out after or before the car was delivered to the defendant does not appear. The defendant by its duly promulgated tariff has a rate of $1.00 per hundred weight from Minneapolis to Portland on emigrant movables or household goods, personal effects and specified kinds of property of no greater value that $10.00 per hundred weight, and a rate of $1.60 where the value exceeds that amount. The verdict was $560.00, but on the motion for new trial the court concluded

139*e* that there could be no recovery for the jewelry in the shipment because such articles are not accepted for shipment by defendant, and the designation of such articles as emigrant movables was a fraud on the carrier, and therefore granted a new trial unless the value of these included in the verdict was deducted therefrom. Plaintiff consented to a reduction of the recovery to $533.40.

The trial court ruled that the Boyd Company was the agent of the

plaintiff in making the shipment, and its acts bound her. That being the case, the defendant contends that it conclusively appears that the Boyd Company knew the different rates, and with full knowledge and opportunity to elect, chose the lower rate with the limited liability. Therefore the contract was fairly entered into. It also claims that the limitation was just and reasonable because there was ample evidence to show that $10.00 a hundred weight is a fair value on emigrant movables and the plaintiff, by her authorized agent, having marked the goods emigrant movables and thereby secured a lower rate, is now estopped from claiming them to be of different character. The defendant also urges that under the Interstate Commerce Act, plaintiff by agreeing to a limited liability, secured a low rate, and it is now unlawful discrimination and a violation of that act for defendant to pay more than the stipulated value for the loss, nor will the law compel such payment.

Under objection plaintiff was permitted to testify that she never knew of or consented to a release of value on her goods, never saw the bill of lading or shipping bill, and understood that her goods would be shipped in the car of the Boyd Company's procuring as a separate freight shipment. She further testified, and there is
139*f* nothing to the contrary, that she informed the Boyd Company of the kind and character of her goods. The defendant also proved that the Boyd Company was engaged in the forwarding, warehouse and transfer business, shipping extensively East and West in carload lots. The assignments of error do not present for review any ruling on the admission of the evidence. If therefore the evidence received tends to support the finding of the jury that the contract limiting the liability of defendant in case of loss to $10.00 per hundred weight was not fairly made, and was not just or reasonable, the case is governed by the decision in Ostroot vs. N. P. Ry. Co., 111 Minn., 504, and there must be an affirmance unless the court erred in giving or refusing to give instructions to the jury. In passing on the question, the jury, on the evidence received, had a right to take plaintiff's situation and her relation to the Boyd Company and its business and relation to defendant into consideration. The Boyd Company does business in the nature of a common carrier. The defendant undoubtedly knew the business of this extensive shipper, knew that the carload lots shipped by the Boyd Company in its name and the freight thereon paid by it were the property of different owners, and that without doubt a considerable portion of the amount saved by shipping at reduced rates goes to the Boyd Company and not to the owners of the goods shipped. The business between defendant and the Boyd Company seems to have been so well established that it had resolved itself into a regular routine where no word need be spoken or negotiation had. The bill of lading which is generally made out for ordinary small shippers by the carrier was made out by the Boyd Company to be signed merely by the defendant. No attempt was made by the clerk who
139*g* acted for the Boyd Company nor by the clerk who acted for defendant in the shipping transaction to ascertain what the goods were or their value, nor did either of them know. Under this

situation a release of nine-tenths of the value of the goods appears neither a contract fairly entered upon nor one that is just or reasonable. Strictly speaking, there was no attempt at an agreed valuation or any valuation by plaintiff, of the goods. The very fact that the bill of lading states "released to $10.00 per cwt." recognizes that the value was greater. How much was released is not disclosed. Moreover, it has been held that a party engaged in the business of the Boyd Company, itself in a certain sense a common carrier and circumstanced to plaintiff as it was, has no authority to limit the liability of the carrier in a shipping contract. Benson vs. Oregon Short Line R. Co., 35 Utah, 241.

In the Ostroot case, supra, the Chief Justice has well stated that contracts limiting the common law liability of common carriers "are exceptions to the common law rule of liability, and they should be carefully scrutinized by the courts, and only enforced when it is made to appear that they are just and reasonable and were fairly entered into by the shipper with full freedom of choice." And since this business of these transfer companies has assumed such proportion as it has in recent years of soliciting and collecting from different persons small shipments to be put together in carload lots and shipped in the name and on account of the transfer company, significant force is given to the warning sounded by Mr. Justice Canty in the concurring statement in Douglas vs. Minnesota Transfer Ry. Co., 62 Minn., 288, viz: "I concur in the foregoing opinion,
139*h* but am of the opinion that the rule of law laid down in this and the Alair case should be watched closely, as in practice it is liable to lead to evasion and abuse on the part of the common carrier." The ostensible shipper, such as the Boyd Company, does not represent the interest of the owner of the property and actual shipper, but stands on a different footing to the carrier than does the latter.

Was there error in refusing to instruct the jury that plaintiff was estopped from claiming a higher value than $54.50 because her agent billed the goods as emigrant movables, and also was there a violation of the Interstate Commerce Act in that by a false billing a cheaper rate was obtained that the goods, properly billed, could have been shipped for so that plaintiff was guilty of a crime? The evidence does not disclose the character of the goods in the car outside of plaintiff's. Assuming that plaintiff is bound by the designation of the goods as emigrant movables made in the bill of lading, the case is not thereby brought within the rule announced in Harrington vs. Wabash Ry. Co., 108 Minn. 257, wherein it was held that a false marking of boxed goods by a shipper's agent whereby a lower rate was obtained is a fraud on the carrier which precludes a recovery of the true value of the goods shipped. As far as we discover from the record, emigrant movables include wearing apparel and the ordinary personal effects of intending settlers, also tools and implements of calling. Thus the dictionary and typewriter of plaintiff, who was apparently a stenographer, come in under the designation in the bill of lading and it covers the goods in question except

the jewelry eliminated from the verdict as it now stands.
139*i* Therefore, there was no fraud in designating or billing the goods which will estop plaintiff from asserting their actual value. Nor for the same reason has there been any violation of the provision of Sec. 10 of the Interstate Commerce Act, as amended June 18, 1910, which makes it a criminal offense to obtain from a common carrier a lower rate than the established tariff by the false billing or false representation of the goods in the packages shipped.

Defendant also contends that the freight rate of $1.00 per hundred weight was given on the agreement that the defendant's liability was limited to $10.00 per hundred weight and the effect of permitting a recovery for more now would amount to a discrimination in favor of plaintiff prohibited by the Interstate Commerce Act. There is nothing in the act directly regulating shipping contracts with reference to the limitation of the carrier's liability. And courts have held that the act does not interfere with the power of the states to determine the validity of contracts limiting the common law liability of common carriers. In the well considered case of Hooker vs. Boston & Maine R., 209 Mass. 598, it is stated: "Limitation of liability by contract in case of loss has not been abolished by the Interstate Commerce Act. Reasonable agreements in this regard are upheld. This is a subject, about which the policy established in the several States prevails, since as well as before the enactment of the federal statutes. Hence an agreement inserted in a bill of lading limiting liability in case of loss has been held invalid if contrary to the law of the State, even though made the basis of a contract of interstate carriage." Of course as to the tariff rates the pub-
139*j* lished tariffs control, and it is not an open question whether these rates are just or reasonable, but we fail to see such a connection between these rates and the attempted limitation of the carrier's liability that the courts may not ascertain and determine the validity of the latter. Mr. Justice Day in the case of Pennsylvania R. Co. vs. Hughes, 191 U. S. 477, involving the application of the Interstate Commerce Act to an attempted limitation of a common carrier, after summarizing the provisions of the act as then existing, says: "We look in vain for any regulation of the matter here in controversy. There is no sanction of agreements of this character limiting liability to stipulated valuations, and, until Congress shall legislate upon it, is there any valid objection to the state enforcing its own regulations upon the subject, although it may to this extent indirectly affect Interstate Commerce contracts of carriage?" The court holds none exists.

We are of the opinion that upon the evidence in the case the trial court did not err in instructing the jury to determine the question whether or not the contract attempting to limit the defendant's common law liability was fairly entered into and was just and reasonable, nor in refusing to give the requests of the defendant to the effect that the limitation was binding on plaintiff and that the verdict should not be more than $54.50. The orders appealed from are affirmed.

HOLT, J.

140 No. 17859. State of Minnesota. Supreme Court. Gertrude O'Connor, Respondent, vs. Great Northern Ry. Co., Appellant. Judgment roll. Filed February 4, 1913. I. A. Caswell, Clerk.

141 17859. State of Minnesota. Supreme Court. Minutes of argument. Filed February 4, A. D. 1913. I. A. Caswell, Clerk.

142 State of Minnesota, Supreme Court, General October Term, A. D. 1912.

Tuesday morning, 9:30 o'clock, January 14, A. D. 1913. Court convened pursuant to adjournment. All the Justices being present.

Reg. No. 17859, Cal. No. 162.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.

A true record.

Attest:

I. A. CASWELL, *Clerk*.

The foregoing is a full and true copy of the Minutes of Argument in the above entitled cause.

[Seal of the Supreme Court, State of Minnesota.]

Attest:

I. A. CASWELL, *Clerk*.
By —— ——, *Deputy*.

143 17859. State of Minnesota, Supreme Court. Order for judgment. Filed February 4, A. D. 1913. I. A. Caswell, Clerk.

144 State of Minnesota, Supreme Court, October Term, A. D. 1912.

No. 162.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Appeal from District Court, Second Judicial District, County of Ramsey.

This cause having been duly argued and submitted at the General *April* October Term of this court A. D. 1912 upon the return to the appeal herein.

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the order of judgment of the Court below, herein appealed from, be and the same hereby is in all things affirmed, and that judgment be entered accordingly.

Entered February 4, A. D. 1913.

By the court.

Attest:

I. A. CASWELL, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original Order for judgment entered in the above entitled cause.

[Seal of the Supreme Court, State of Minnesota.]

Attest:

I. A. CASWELL, *Clerk.*

145 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have compared the within copy with the said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said Supreme Court at the Capitol, in the City of St. Paul, February 4, A. D. 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk.*

State of Minnesota, Supreme Court. Transcript of judgment. Filed February 4, A. D. 1913. I. A. Caswell, Clerk.

146 State of Minnesota, Supreme Court, October Term, A. D. 1912.

No. 162.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Pursuant to an order of Court duly made and entered in this cause February 4, A. D. 1913.

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Second Judicial District, sitting within and for the County of Ramsey be and the same hereby is in all things affirmed. And it is further determined and adjudged that the Respondent above named, do have and recover of said Appellant herein the sum and amount of Forty and 75/100 dollars, ($40.75) costs and dis-

bursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed February 4, A. D. 1913.

By the court.

Attest:

I. A. CASWELL, *Clerk.*

Statement for Judgment.

Cost allowed by statute	$25.00
Printer's fees	4.50
Clerk's fees, Supreme Court	10.25
Affidavits and Acknowledgments	1.00
Return	
Postage and express	
Filing Mandate	
	$40.75

147 *Authentication of Record.*

SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Great Northern Railway Company, Plaintiff in Error, and Gertrude O'Connor, Defendant in Error, and also of the opinions of the court rendered therein together with the assignments of error to said court, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this February —, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

148 In the Supreme Court of the United States.

GREAT NORTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.
GERTRUDE O'CONNOR, Defendant in Error.

Assignments of Error.

Comes now the Great Northern Railway Company, the plaintiff in error in the above entitled cause and avers and shows that in the record and proceedings in said cause, the Supreme Court of the State of Minnesota erred to the grievous injury and wrong of the

plaintiff in error herein, and to the prejudice and against the rights of the plaintiff in error in the following particulars, to-wit:

The said Supreme Court erred in holding that defendant in error was entitled to recover the actual value of her personal property described in the complaint, notwithstanding the agreed value thereof was specified in the bill of lading as not exceeding Ten ($10.00) Dollars per hundred weight.

The said Supreme Court erred in holding that the validity of the released valuation of Ten Dollars per hundred weight as specified in the bill of lading was a question of fact for the jury to determine, notwithstanding the facts in that regard were undisputed.

The said Supreme Court erred in holding that the de-
149 fendant in error was not bound by the action of her agent the Boyd Storage & Transfer Company in placing a valuation of Ten Dollars per hundred weight in the bill of lading for the purpose of obtaining the reduced tariff rate based on such valuation.

The said Supreme Court erred in holding that notwithstanding the Acts of Congress regulating interstate commerce and particularly what is known as the Carmack Amendment of June 29, 1906, defendant in error was entitled to recover the actual value of her goods shipped under a reduced tariff rate based on a valuation of Ten Dollars per hundred weight.

That said Supreme Court erred in holding that notwithstanding the decision of the United States Supreme Court in the case of Adams Express Company vs. Kroninger, the jury were justified in finding that defendant in error did not enter into a binding contract limiting the value of her goods as specified in the bill of lading, and that she could recover the actual value thereof.

The said Supreme Court erred in holding that the exercise by Congress of jurisdiction and control over shipping contracts relating to interstate commerce does not deprive the State Court and jury of power to determine whether such a contract amounted in fact to a fair and reasonable agreement as to the value of freight shipped under a reduced tariff rate based on a released valuation.

Said Supreme Court erred in not reversing the judgment of the trial court, and in denying to plaintiff in error its rights under the acts of Congress regulating interstate commerce.

150 Wherefore, for these and other manifest errors appearing in the record, the said Great Northern Railway Company, plaintiff in error, prays that the judgment of the said Supreme Court of the State of Minnesota be reversed and set aside and held for naught, and that judgment be rendered for plaintiff in error granting it its rights under the statutes of the United States and plaintiff in error also prays for judgment for its costs.

E. A. LENDLEY,
Attorney for Great Northern Railway Company, Plaintiff in Error.

151 [Endorsed:] In the Supreme Court of the United States Great Northern Railway Company, Plaintiff in Error, vs. Gertrude O'Connor, Defendant in Error. Assignments of Error. Filed Feb. 4, 1913. I. A. Caswell, clerk.

152 In the Supreme Court of the State of Minnesota.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

To the Honorable Justices of the Supreme Court of the State of Minnesota:

Your petitioner, the above named Great Northern Railway Company, respectfully shows that on the 4th day of February, 1913, the Supreme Court of the State of Minnesota rendered a final judgment against your petitioner in a certain case wherein your petitioner was defendant, and Gertrude O'Connor was plaintiff, as will appear by reference to the record and proceedings in said case, and that the said court is the highest court of law or equity of said state in which a decision in said suit could be had; that by the said suit there was drawn in question the construction of certain statutes of the United States regulating commerce among the several states, and the decision of this court is against the right claimed by the said Great Northern Railway Company, appellant, and as it believes contrary to the statutes of the United States regulating commerce among the several states, and against the right of the said Great Northern Railway Company thereunder, all of which will more fully appear in detail from the assignment of errors filed herein.

Wherefore, the said Great Northern Railway Company prays that a writ of error may issue to the Supreme Court of the State
153 of Minnesota for the correcting of the errors complained of, and that a duly authenticated transcript of the record proceedings and papers therein may be sent to the United States Supreme Court.

GREAT NORTHERN RAILWAY COMPANY,
By E. A. LENDLEY, *Attorney for Appellant.*

154 [Endorsed:] In the Supreme Court of the State of Minnesota. Gertrude O'Connor, Respondent, vs. Great Northern Railway Company, Appellant. Petition for writ of error. Filed Feb. 4, 1913. I. A. Caswell, clerk.

155 In the Supreme Court of the State of Minnesota.

GERTRUDE O'CONNOR, Respondent,
vs.
GREAT NORTHERN RAILWAY COMPANY, Appellant.

Comes now the Great Northern Railway Company, the appellant above named, on this 4th day of February, 1913, and files and presents to this Court, its petition, praying for the allowance of a writ of error intended to be urged by it; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Su-

preme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper; and upon consideration of the said petition this court desiring to give petitioner an opportunity to test in the Supreme Court of the United States, the questions herein presented, it is ordered by this Court that a writ of error be allowed, as prayed, provided however, that the said Great Northern Railway Company, appellant, give bond according to law in the sum of One Thousand Dollars ($1000,00), which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 4th day of February, 1913.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

156 [Endorsed:] In the Supreme Court of the State of Minnesota. Gertrude O'Connor, Respondent, vs. Great Northern Railway Company, Appellant. Order Allowing Writ of Error. Filed Feb. 4, 1913. I. A. Caswell, Clerk.

157 Know all men by these presents, that we, Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, as principal, and the National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto Gertrude O'Connor, in the sum of One Thousand ($1000.00) Dollars, to be paid to the said obligee, her heirs, representatives, and assigns, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fourth day of February, 1913.

Whereas, lately, in the Supreme Court of the State of Minnesota, in a suit pending in said court between Gertrude O'Connor, plaintiff, and Great Northern Railway Company, defendant, judgment was entered against said defendant, and said defendant seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in the said suit.

Now therefore, the condition of this obligation is such that if the above named defendant, Great Northern Railway Company, shall prosecute its said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

GREAT NORTHERN RAILWAY COMPANY,
By C. R. GRAY, *President.*

Attest:
F. W. BOBBETT, [CORPORATE SEAL.]
Ass't Secretary.

[National Surety Company Seal.]
NATIONAL SURETY COMPANY,
By C. M. BEND, [CORPORATE SEAL.]
Its Attorney in Fact.

158 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 4th day of February, 1913, before me appeared C. R. Gray, to me known, who, being by me duly sworn did say that he is the President of the Great Northern Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that the said instrument was executed in behalf of said corporation by authority of its Board of Directors and said C. R. Gray acknowledge- said instrument to be the free act and deed of said corporation.

Witness my hand and official seal the day and year first above written.

[NOTARIAL SEAL.] GUSTAVE E. WALBERT,
Notary Public, Ramsey County, Minnesota.

My commission expires June 7, 1919.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 4th day of February, A. D. 1913, before me appeared C. M. Bend, to me personally known, who being by me duly sworn, did say that he is the attorney-in-fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] GEO. L. SEEGEL,
Notary Public, Ramsey County, Minnesota.

My commission expires June 11th, 1919.

The within bond is this 4th day of Feb'y, 1913, approved.
CALVIN L. BROWN,
Chief Justice.

Endorsed: Filed Feb. 4, 1913. I. A. Caswell, Clerk.

159 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, or some of you, being the highest court of law or equity of the said state, in which a decision could be had in the said suit between Gertrude O'Connor, Plaintiff and respondent, and the Great Northern Railway Company, defendant and appellant, wherein was drawn in question the construction of a clause

of the constitution or statute of the United States, and the decision was against the right or privilege specially set up or claimed under such clause of the said constitution or statute, a manifest error hath happened to the great damage of the said Great Northern Railway Company as by its complaint appears. We being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

160 Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 4th day of February in the year of our Lord one thousand nine hundred and thirteen.

Done in the City of St. Paul, County of Ramsey, State of Minnesota, with the seal of the District Court of the United States for the district of Minnesota attached.

CHARLES L. SPENCER,
Clerk of the District Court of the United States for the District of Minnesota.
By MARGARET L. MULLANE,
Deputy Clerk.

[U. S. Dist. Court Seal. Dist. of Minnesota. Third Division.]

Allowed by:
CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

161 [Endorsed:] In the Supreme Court of the United States. Great Northern Railway Company, Plaintiff in Error, vs. Gertrude O'Connor, Defendant in Error. Writ of error. Filed Feb. 4, 1913. I. A. Caswell, clerk.

162 *Certificate of Lodgment.*

SUPREME COURT,
State of Minnesota, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that there was lodged with me as such clerk on February 4, 1913, in the matter of Gertrude O'Connor versus The Great Northern Railway Company,

1. The original bond of which a copy is herein set forth;

2. Two copies of the writ of error,—one for defendant in error, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this February —, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk of the Supreme Court of Minnesota.

163 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Gertrude O'Connor, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein the Great Northern Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 4th day of February, 1913.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

ST. PAUL, MINN., *Feb. 4th*, 1913.

We, the undersigned, attorneys of record for Gertrude O'Connor, defendant in the above entitled case, hereby acknowledge due service of the above citation.

JAMES MATTIMORE,
T. P. McNAMARA,
Attorney- for Gertrude O'Connor.

164 [Endorsed:] In the Supreme Court of the United States. Great Northern Railway Company, Plaintiff in Error, vs. Gertrude O'Connor, Defendant in Error. Citation. Filed Feb. 5, 1913. I. A. Caswell, clerk.

165 ***Return to Writ.***

UNITED STATES OF AMERICA,
Supreme Court of Minnesota, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, in the city of St. Paul, Minnesota, this February —, 1913.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

Endorsed on cover: File No. 23,571. Minnesota Supreme Court. Term No. 996. Great Northern Railway Company, plaintiff in error, vs. Gertrude O'Connor. Filed March 3d, 1913. File No. 23,571.

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Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 996.

GREAT NORTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

GERTRUDE O'CONNOR,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

E. C. LINDLEY,
Attorney for Plaintiff in Error.

M. L. COUNTRYMAN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 996.

GREAT NORTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

GERTRUDE O'CONNOR,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

There are no facts in dispute.

The Boyd Transfer & Storage Company, a Minnesota corporation, is a public warehouseman with its principal place of business in Minneapolis. It is engaged in the business of storing personal property, including household goods, and in making shipments for its patrons.

Such shipments are made in carload lots containing the goods of various owners, bill of lading for each carload being issued by the carrier to the Boyd Transfer & Storage Company as consignor, and a similar Transfer & Storage Company at destination being named as consignee.

The transactions out of which this controversy arose were as follows: The Boyd Transfer & Storage Company on November 31, 1910, loaded at Minneapolis a carload of emigrant movables and household goods consigned to the Portland Van & Storage Company at Portland, Oregon. The traffic manager of the Boyd Company, F. W. Nachtigall, superintended the loading of the car from the storage warehouse or depot of the Boyd Company, and when it was loaded he filled out a bill of lading (called a "shipping order") which had previously been furnished to him in blank by the Great Northern Railway Company, and presented it to the agent of that company for his signature, which was thereupon affixed. This bill of lading (defendant's exhibit No. 4, page 66 of the record) when so filled out by Nachtigall and presented to the carrier's agent, contained the clause "released to $10.00 per cwt.," which was written thereon by Nachtigall. He was at that time familiar with the provisions of the Great Northern tariffs between Minneapolis and Portland and knew that in order to obtain a rate of $1.00 per cwt. for his carload shipment between those points such valuation of $10.00 was necessary. He also knew that there was a rate of $1.60 per cwt. established by the

Great Northern tariffs between Minneapolis and Portland on household goods and emigrant movables in carloads on which the carrier was liable to the full value of the goods. (Pages 47 and 48 of the record.) He testified that he billed this carload in the usual manner as he billed all their emigrant movable cars.

> "Q. You bill all your emigrant movable cars at this purported released rate of $10.00 per cwt. without reference to the value of the goods?
>
> A. We do.
>
> Q. And that is just what you did in this case, billed it at the released rate of $10.00 per hundred, without reference to the value of the articles in the car.
>
> A. That is the way it was billed."

He also testified:

> "In my experience in this business I found that $10.00 valuation on emigrant movables is a very fair valuation."

The Transcontinental Freight Bureau Westbound tariff, duly published and filed by defendant, and applicable to this shipment, will be found on page 64 of the record. The lawful rate established thereby for carload shipments of emigrant movables and household goods from Minneapolis to Portland is $1.00 per cwt. where the declared valuation does not exceed $10.00 per cwt. and $1.60 per cwt. in the absence of such released valuation. No question is raised as to the provisions of these tariffs or as to the fact that they were in effect and applicable to this shipment.

Gertrude O'Connor, defendant in error, delivered to the Boyd Transfer & Storage Company a

trunk and certain boxes containing her personal property, the total weight of which was 540 lbs. and she instructed the Boyd Company to ship them for her to Portland. She testified that she gave the Boyd Company the authority to ship her goods "the way they ship all their goods." (Page 12 of the record.) These goods were in the car in question and were destroyed in a railroad wreck while being transported by the Great Northern Railway Company from Minneapolis to Portland. She brought this action against the company to recover the full value of her goods, alleged to be $598.65. Defendant admitted the destruction of the goods and offered judgment in the sum of $54.50 with interest and costs, which offer was based upon the released valuation of $10.00 per cwt., which was refused.

The trial court held that upon these facts it was a question for the jury whether the released valuation of $10.00 per cwt. was agreed to on behalf of the plaintiff, the question for the jury to determine being—"Was this contract fairly entered into and was it just and reasonable?" The jury was instructed as follows:

> "Under the law enacted by congress, known as the Interstate Commerce Act, it was the duty of the defendant to file with the Interstate Commerce Commission tariffs or schedules showing rates, fares and charges in effect for the transportation of property over its lines from points in one state or territory to points in any other state or territory of the United States, together with any and all rules, regulations, privileges, facilities or conditions to which such rates, fares and charges

were subject, and after such tariffs or schedules were filed and published as required by the law referred to, the rates, fares and charges contained therein became legally established and the plaintiff through her agent, the Boyd Transfer & Storage Company, in accepting one of the rates shown in such tariffs or schedules, and declaring the value of her property to be not in excess of $10.00 per hundredweight, accepted such rate subject to all the conditions, limitations and restrictions shown in the tariff in connection with such rate, and is bound thereby *if such contract of acceptance was fairly entered into and was just and reasonable.* So we come to the question in this case, was this contract fairly entered into and was it just and reasonable?

"Now, it is not claimed in this case that there was any deceit or coercion practiced upon the plaintiff's agent at the time the contract was entered into to induce him to make this particular contract. On the other hand, the agent admits that he was informed as to the different rates and tariffs and that he made this contract advisedly and that he wrote this limitation in the contract himself; and in this connection it is proper for you to consider whether the amount specified in this contract limiting the liability purports to be an agreed valuation entered into knowingly and purposely by the parties, or whether the fixing of that limitation in value was an attempt on the part of the defendant carrier to limit the amount of recovery to a certain amount irrespective of the actual value of the articles and without regard to the wishes and desires of the plaintiff acting through her agent. If this contract limiting the liability represented the wishes and the desires of the plaintiff, acting through her agent at that time, then the contract will be binding upon the plaintiff.

"If you believe from the evidence that this limitation was a mere arbitrary valuation put in there simply for the purpose of limiting the

> defendant's liability, without regard to the wishes or desires of the plaintiff, acting through her agent, then it would not be a just and reasonable limitation upon the contract, and under those circumstances the defendant would be liable for the reasonable market value of such of the goods as she would be entitled to recover for under the evidence in this case, and under such circumstances the defendant's liability would not be limited to the value of the articles at $10.00 per hundredweight as specified in the contract." (Page 55 of the record.)

Plaintiff obtained a verdict of $560.00 and judgment was entered thereon. Defendant appealed to the Supreme Court of the state, which affirmed the judgment. Two opinions, written by the Supreme Court upon separate appeals, were rendered. (Pages 70-76 of the record.) The grounds upon which the Supreme Court of Minnesota held that plaintiff was not bound by the released valuation in the bill of lading will be set forth and discussed in this brief. To review this judgment the Great Northern Railway Company has sued out a writ of error.

SPECIFICATIONS OF ERROR.

The Supreme Court of the State of Minnesota erred:

1. In holding that defendant in error was entitled to recover the actual value of her personal property described in the complaint, notwithstanding the agreed value thereof was specified in the bill of lading as not exceeding ten ($10.00) dollars per hundredweight.

2. In holding that the validity of the released valuation of ten dollars per hundredweight as specified in the bill of lading was a question of fact for the jury to determine, notwithstanding the facts in that regard were undisputed.

3. In holding that the defendant in error was not bound by the action of her agent, the Boyd Transfer & Storage Company, in placing a valuation of ten dollars per hundredweight in the bill of lading for the purpose of obtaining the reduced tariff rate based on such valuation.

4. In holding that notwithstanding the Acts of Congress regulating interstate commerce and particularly what is known as the Carmack Amendment of June 29, 1906, defendant in error was entitled to recover the actual value of her goods shipped under a reduced tariff rate based on a valuation of ten dollars per hundredweight.

5. In holding that notwithstanding the decision of the United States Supreme Court in the case of Adams Express Company v. Croninger, the jury

were justified in finding that defendant in error did not enter into a binding contract limiting the value of her goods as specified in the bill of lading and that she could recover the actual value thereof.

6. In holding that the exercise by Congress of jurisdiction and control over shipping contracts relating to interstate commerce does not deprive the state court and jury of power to determine whether such a contract amounted in fact to a fair and reasonable agreement as to the value of freight shipped under a reduced tariff rate based on a released valuation.

7. In not reversing the judgment of the trial court, and in denying to plaintiff in error its rights under the acts of Congress regulating interstate commerce. (Page 80 of the record.)

ARGUMENT.

UNDER THE ACT TO REGULATE COMMERCE, DEFENDANT IN ERROR WAS BOUND BY THE RELEASED VALUATION OF $10.00 PER CWT. DECLARED BY HER AGENT, THE BOYD TRANSFER AND STORAGE COMPANY, UPON WHICH VALUATION SHE OBTAINED A LOWER RATE OF FREIGHT IN ACCORDANCE WITH THE CARRIER'S INTERSTATE TARIFF PROVISIONS.

The question here presented is no longer debatable, having been fully settled by the recent decisions of this court.

Adams Express Co. v. Croninger, 226 U. S. 491.

Kansas City, etc., R. Co. v. Carl, 227 U. S. 639.

Missouri K. & T. R. Co. v. Harriman, 227 U. S. 657.

Wells-Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469.

C. B. & Q. R. Co. v. Miller, 226 U. S. 513.

C. St. P. M. & O. Ry. Co. v. Latta, 226 U. S. 519.

The decision of the state court in this case is squarely in opposition to the rule established by the above decisions. The state court erroneously concluded that notwithstanding the decision in the Croninger case and the other cases in which that doctrine was followed, the validity of a released valuation clause in an interstate shipping contract is to be determined by evidence as to whether the shipper entered into a fair and reasonable contract for such limitation of value. This view is thus expressed by the state court in its opinion:

> "It is urged that the decisions of the U. S. Supreme Court in Adams Express Co. v. Croninger, C. B. & Q. Ry. v. Miller and C. St. P. M. & O. Ry. Co. v. Latta, just decided, make the alleged contract in this case a binding contract as a matter of law. We do not so understand these decisions. The existence of such a contract was not in controversy in any of these cases. These decisions do not decide that the transactions here disclosed make, as a matter of law, an unimpeachable contract. What they hold is, that when such a contract is made out, its enforcibility is determined, not by the local law of the state, but by Federal law, so that a provision of a state constitution or statute making such contracts void, or the decision of a state court that such contracts are against public policy, is not controlling." (Page 71 of the record.)

While the state courts held that it was for the jury to decide whether plaintiff entered into a fair contract releasing the valuation of her goods to $10.00 per cwt., it was not claimed by counsel or by the court that there was any dispute as to the facts. The uncontradicted testimony of her agent, the Boyd Transfer & Storage Company, was that it deliberately and with full knowledge of the tariff provisions inserted in the bill of lading the clause releasing the valuation to $10.00 per cwt. for the purpose of obtaining a lower freight rate established by the tariff for such released valuation. The state Supreme Court followed its previous decisions to the effect that a contract limiting a carrier's liability for loss of freight must be shown to have been entered into fairly and reasonably and with a full understanding on the part of the shipper.

Since this writ of error was sued out, the Minnesota Supreme Court has seen its error and has in effect overruled its decision in the case at bar. Ford v. C. R. I. & P. Ry. Co. (decided Oct. 3, 1913) 143 N. W. Rep. 249. In that case the carrier's interstate tariff placed a limitation of $100.00 upon a passenger's baggage, in the absence of a higher valuation. The plaintiff received a baggage check, but did not have his attention called to the $100 valuation and was not informed of it. The Minnesota court held that he could not recover for the loss of his baggage beyond that limitation. The court (P. 252) said:

> "The interstate commerce act refers to interstate transportation of passengers as well as to interstate transportation of freight. The same general policy applies.
>
> We hold that the provisions relative to liability as to baggage and charges for excess baggage bind the carrier and passenger in the same way as the schedules of freight tariffs bind the carrier and shipper. And, following what we understand to be the effect of the decisions of the Supreme Court of the United States, we hold that there was a valid limitation of liability for loss of the plaintiff's baggage."

It is respectfully submitted that the judgment of the state court denies to plaintiff in error its rights under the act to regulate commerce, and that the judgment should be reversed.

E. C. LINDLEY,
Attorney for Plaintiff in Error.

M. L. COUNTRYMAN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 996.

GREAT NORTHERN RAILWAY COMPANY,
Plaintiff in Error,

vs.

GERTRUDE O'CONNOR,
Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The statement of facts in the brief of plaintiff in error is incomplete and in some respects misleading.

The goods of defendant in error were stored with the Boyd Transfer Company in Minneapolis and the Boyd Transfer Company arranged with the railroad company for the shipment of the goods to Portland, Oregon.

Defendant in error signed a contract with the Boyd Transfer people to have her goods boxed and agreed to pay for them when they reached Portland. She "noticed a clause of $5.00 valuation on the paper and objected to shipping her goods at a low valuation as they were not insured." (Record page 8).

Defendant in error had no knowledge of the release in the valuation of her goods until this action was brought. She says:

> "In speaking with the Boyd Transfer people I declared my goods to be new and they had a good idea of their approximate value." (Record page 8).
>
> "I told the Boyd people that I was willing to pay the regular rate and nothing was said as to just what valuation they were going under, but I understood I would have to pay the regular rate when they arrived in Portland, Oregon." (Record page 9).

She did not sign any agreement with the Boyd Transfer people or with the Railroad Company releasing the valuation of her property. (Record page 9).

She further testified:

> "I told them" (Boyd Transfer Company) "to ship my goods to the coast and they said they had a through car and said nothing about shipping household goods in their car, and I understood it was being shipped as freight is regularly shipped and as a separate shipment."

The witness Nachtigall who wrote on the bill of lading the words "released to $10.00 per C. W. T." did not superintend the loading of the shipment

as counsel for plaintiff in error stated. On the contrary he testified that he never at any time saw the goods in question or the car in which they were loaded, but not withstanding this fact he billed them as released to $10.00 per cwt. (Record page 48).

Nachtigall, the manager of the Boyd Transfer Company made no statement to the railroad company as to the value of the goods in question and the agent himself never saw or looked for the goods or inquired as to their value. (Record page 23).

ARGUMENT.

NACHTIGALL, THE MANAGER OF THE BOYD TRANSFER COMPANY, HAD NO AUTHORITY TO RELEASE THE VALUE OF THE GOODS OF DEFENDANT IN ERROR.

In support of the above statement we quote as good law and good logic the language of the court in the case of Benson against Oregon Short Line Railroad Company, 99 Pacific 1072, decided by the Supreme Court of Utah February 6th, 1909:

> "Appellant insists that respondent having employed Oeschili, a drayman, to pack the goods in question and deliver them at the depot for shipment, she thereby made him her agent, and that notice to Oeschili of the stipulation in the release was notice to her, and all arrangements he may have made or entered into with the appellant for the transportation of the goods, including the stipulation in the release limiting appellant's liability to the nominal sum therein named, were binding upon her. We do not think the record sustains appellant's position. Respondent was not furnished with a copy of the release. In fact, she did not know of its existence until long after the goods were shipped and some of them had reached their destination. Under these circumstances, it cannot be said that she assented to any limitation of appellant's liability as a common-law carrier; and, not having assented to the contract, she was not bound by it. Furthermore, the drayman, was in this case himself a common carrier. Cyc. 369; 2 Words & Phrases, 1317; O. S. L. R. Co. v. Davidson, 33 Utah, 370, 94 Pac. 10, 16 L. R. A. (M. S.) 777. Therefore the relation existing between him and respondent at the time the goods were consigned

> for shipment was that of shipper and carrier rather than that of principal and agent. The only instructions respondent gave Oeschili with reference to shipping the goods were, quoting her own testimony, which is not denied: 'I told him to take them to the depot and ship them.' These general instructions gave Oeschili no authority to make a special contract limiting appellant's liability as a common carrier."

If this is good law as we feel it is, there was no valid contract releasing the value of the goods in question, and the judgment of the State Court should be sustained.

Counsel for appellant bases his claim for reversal of the judgment of the State Court upon the decision of this Court in the following cases:

Adams Express Co. v. Croninger, 226 U. S. 491.

Kansas City, etc., R. Co. v. Carl, 227 U. S. 639.

Missouri K. & T. R. Co. v. Harriman, 227 U. S. 657.

Wells-Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469.

C. B. & Q. R. Co. v. Miller, 226 U. S. 513.

C. St. P. M. & O. Ry. Co. v. Latta, 226 U. S. 519.

It has not, however, in any of the above cases, been held by this court that, under the federal legislation, a carrier may limit its liability for its own negligence without either a contract or acts constituting an estoppel.

In Missouri, Kansas & Texas Ry. Co. v. Harriman, 227 U. S. 657, the latest case on the subject, it was said:

"The liability imposed by the statute is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence." 227 U. S. 672.

Also that:

"The ground upon which the shipper is limited to the valuation declared is that of estoppel, and presupposes the valuation to be one made for the purpose of applying the lower of two rates based upon the value." 227 U. S. 668.

The Interstate Commerce Commission, speaking on the subject, has said:

"Can it possibly be argued that when a carrier has arbitrarily placed in its bill of lading a stipulation limiting the amount o its liability, regardless of the actual value of the property, it may claim the benefit of an estoppel? Obviously not. The cases which take cognizance of this fundamental difference in principle are numerous and well considered."

Released Rates, 13, Interst. Com. Com'n R. 550, 554, 555.

The provisions of the railroad tariffs claimed to be applicable to the shipment in question are found on page 65 of the Record. The provisions applicable where the value is not declared by the shipper not to exceed $10.00 per 100 lbs. is as follows:

"House hold Goods, N. O. S. (including Second-hand Furniture (Not to exceed two pianos), Stoves, etc., also Personal Effects), charges must be prepaid or guaranteed, Min. C. L. wt. 20,000 lbs. (See notes 1, 2, 3 and 4, below), $1.60 per cwt. carloads."

The provision applicable in cases where the value is declared not to exceed $10.00 per 100 lbs. is as follows:

> "Household Goods, N. O. S. (including Second-hand furniture (not to exceed two Pianos),), Stoves, etc., also Personal Effects), the value of which is declared by the shipper not to exceed $10.00 per 100 lbs. charges must be prepaid or guaranteed, min. C. L. wt. 20,000 lbs. (See Notes 1, 2, 3 and 4 below), $1.00 per cwt. carloads."

The Court will observe that to entitled a shipper to the $1.00 per cwt. rate instead of the $1.60 per cwt. rate, it must expressly appear that the value of the goods are *"declared by the shipper not to exceed* $10.00 *per* 100 *lbs."*

There was in this case no *declared* valuation by defendant in error or by the Boyd Transfer Company. On the contrary it appears that the Boyd Transfer Company attempted to *release* the value of the goods from their true valuation to a lower value.

The Judgment appealed from should be affirmed for the following reasons:

First. There was no valid contract between plaintiff in error and defendant in error releasing the valuation of the goods in question.

Second. The Boyd Transfer Company had no authority express or implied to release or declare the value of the goods of defendant in error to be anything different from their actual value.

Third. The contract in question was not fairly entered into and was not just and reasonable, be-

cause no attempt was made by any of the parties actually signing the contract to ascertain or estimate the value of the goods with reference to their actual value.

Fourth. Neither the agent of the Boyd Transfer Company who made out the bill of lading and wrote the release clause thereon, nor the agent of the Railroad Company, ever saw or made the slightest investigation to learn or determine the value of the goods of defendant in error, and the attempted release was made without any reference to such value and without the knowledge or consent of the owner.

Fifth. There was no value *declared* by the shipper as is required by the tariffs of the Railway Company above referred to and in the absence of such *declared* value the Railway Company was entitled to and should have charged the $1.60 per cwt. rate instead of the $1.00 per cwt. rate.

A shipper may be liable for rebating if he accept a less rate than the published rate, even though he do so innocently and in ignorance of the true rate; but it has never been held that the diminution of his claim for damages in case of loss is one of the penalties imposed on the shipper in such cases.

Respectfully submitted,

C. D. O'BRIEN,
Counsel for Defendant in Error.

JAMES MATTIMORE and
T. P. McNAMARA,
Of Counsel.